

1  
2 UNITED STATES DISTRICT COURT  
3 NORTHERN DISTRICT OF INDIANA  
4 HAMMOND DIVISION

5 UNITED STATES OF AMERICA, )  
6 Government, )  
7 VS. ) Cause: 2:10 cr 123  
8 WILLIE HARRIS , )  
9 Defendant. )

10  
11 The CONTINUED SENTENCING HEARING in the above-entitled  
12 matter was commenced before Honorable Philip P. Simon, Chief Judge  
13 of said court, at the Federal Building, 5400 Federal Plaza,  
14 Hammond, Indiana, on the 4TH day of April, 2014 commencing at the  
15 hour of 10:30 in the forenoon.  
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21 Sharon Boleck Mroz, CSR, RPR, CPE  
22 Official Court Reporter  
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24 Northern District of Indiana  
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Appearances:

Ms. Toi Denise Houston  
Office of the United States Attorney  
5400 Federal Plaza, Ste 1500  
Hammond, IN 46320

On behalf of the Government ;

Mr. Arlington J. Foley  
Attorney At Law  
1942 North Main Street  
Crown Point, IN 46307

On behalf of the Defendant.

Defendant present in person.

Also present: Cecil Frink, Postal Inspector  
Mary Johnson, Postal Inspector  
David Beier, Probation.

1	I N D E X		
2	Inspector Cecil Frink		
3	Houston - Direct -----	20	
	Foley - Cross-----	32	
4	Houston - Redirect-----	40	
	Foley - Recross-----	43	
5	Houston -Redirect-----	46	
6	Melanie Thompson		
	Houston -Direct-----	60	
7	Foley - Cross-----	61	
8	Willie Harris		
	Foley- Direct-----	67	
9	Sentence imposed -----		100
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1	EXHIBITS
2	Government's
3	Amended Ex C-----21
4	D-----23
5	E-----26
6	F-----27
7	G1 and G2-----30
8	H-----31
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1 THE CLERK: All rise .

2 THE COURT: All right . You can be seated .

3 All right . We are on the record in United States versus  
4 Harris , 2:10 CR 123 . This is a continuation of the sentencing  
5 hearing that we began a few weeks ago .

6 We ended that evening around 5:30, and there was still a  
7 few issues outstanding , so, I continued it to today's date .

8 Mr. Harris is present with his lawyer , Arlington Foley .  
9 Toi Houston is here for the Government . Just if you would state  
10 for the record your agents that are here with you .

11 MS. HOUSTON: Yes, Your Honor .

12 Supervisory Inspector Cecil Frink from the United States  
13 Postal Inspection Service and Inspector Mary Johnson .

14 THE COURT: All right . So, when we left off last -- I  
15 believe there were still two issues for me to decide relating to  
16 the Sentencing Guidelines , and I still hadn't considered both  
17 sides' request for non-guideline sentences .

18 So, those are the issues that I think were remaining . In  
19 the meantime , the Government has filed a motion asking me to  
20 reconsider one of the earlier rulings that I made relating to the  
21 number of victims .

22 So, if I choose to reconsider that, that leaves three  
23 issues that need to be decide as it relates to the Sentencing  
24 Guidelines before we get to the 3553 A factors portion of the  
25 sentencing hearing .

1 Do you agree with that, Mr. Foley?

2 MR. FOLEY: Yes. I would like to comment if I'm given  
3 the opportunity.

4 THE COURT: Comment on --

5 MR. FOLEY: On the conduct of the hearing, the manner in  
6 which it should be conducted today, at least the way I understand  
7 it and the way things have developed since the last hearing, and  
8 including the Government's motion to reconsider.

9 THE COURT: Okay. Well, what I'm asking, is that the  
10 universe of issues that are presently before me as it relates to  
11 the Sentencing Guidelines. One is the amount of the loss, which we  
12 still hadn't decided because you had requested additional time to  
13 consider that issue.

14 MR. FOLEY: Yes.

15 THE COURT: The second one was whether or not this prior  
16 conviction that's represented in paragraph 72, you know, is valid  
17 or not.

18 You raised it as an objection at the last hearing orally.  
19 It wasn't in the presentence report. So, that issue is to be  
20 decided, and then I'm just laying out on the table the Government's  
21 also filed a motion to reconsider, and I'm going to hear from you  
22 on that --

23 MR. FOLEY: Right.

24 THE COURT: -- as it relates to the victim adjustment.

25 What I'm asking right now, is there any other issues from

1 a guideline perspective that I need to decide that I haven't  
2 already resolved?

3 MR. FOLEY: May I answer that without a yes or no answer?

4 THE COURT: Sure.

5 MR. FOLEY: It's only because -- I don't want to confuse  
6 anything, make things any more complicated than they already have  
7 been. As you know, Mr. Harris and I have had our differences  
8 during the course of this entire lengthy proceeding.

9 And my belief is I agree with the Court, 100 percent,  
10 that -- however, I do not agree that the Government -- that the  
11 Government's motion should be reconsidered by the Court at all.

12 THE COURT: Okay. We'll get to that.

13 MR. FOLEY: I understand. But my client is asking me to  
14 do some things that I don't believe are appropriate just as I don't  
15 think that the Government's motion for reconsideration is  
16 appropriate, only because in my mind, certain issues were closed,  
17 evidence was heard and we were done.

18 And then we came in here today for a couple of limited  
19 items, and then couple of arguments and sentencing.

20 And I don't want to reopen other things, but my client's  
21 asking me to, and that would dictate filing other motions and  
22 coming back for other hearings.

23 THE COURT: I'm not doing that.

24 MR. FOLEY: I understand, and I --

25 THE COURT: What -- it's your obligation to file what you

1 think is appropriate , Mr. Foley. Period. If you don't think it's  
2 appropriate , then you ought not file it.

3 If you think it is, then you should. I'm not going to  
4 tell you what to do.

5 MR. FOLEY: I understand. And I'm just putting that on  
6 the record to let the Court know where I'm coming from and yes, I  
7 agree with the Court, I do with that caveat.

8 THE COURT: Miss Houston .

9 MS. HOUSTON: Yes, Your Honor, the loss amount, the prior  
10 conviction, the Government's motion to reconsider, and I believe  
11 that the Court said with respect to the use of a minor that you  
12 would take it under advisement under 3553 A.

13 THE COURT: Yeah, I already ruled on the issue. I found  
14 in favor of the Government, but I think I stated at the time that  
15 it made no sense to me, given the circumstances of this case, but  
16 that's a 3553 A --

17 MS. HOUSTON: I agree with you.

18 THE COURT: -- issue.

19 MS. HOUSTON: I agree with you, Your Honor.

20 THE COURT: Is there any other evidence that you wish to  
21 present as it relates to the amount of the loss. I think it was  
22 your contention that the amount of the loss, and it's been  
23 supported with these charts that you have filed, that it's roughly  
24 \$306,000 or in that range. And the cut-off under the guidelines is  
25 somewhere below 200,000. So, Mr. Foley, you had asked for



1 additional time to see if you wanted to present any evidence to me  
2 that would persuade me that the amount of the loss is below that  
3 next level .

4 MR. FOLEY: I don't have in any additional evidence to  
5 present to get it below 200,000 . It would be impossible to do  
6 that .

7 THE COURT: All right . So, is there anything else you  
8 wish to present then, Miss Houston ?

9 MS. HOUSTON: No. With respect to that, Your Honor, I  
10 just wanted to point out that we did in the amended sentencing  
11 Exhibit A, I leave highlighted in yellow under the American Express,  
12 that there were three figures that needed to be redacted or cut  
13 out, and I'm going to do that right now . And I gave you the figure  
14 last time, because Inspector Frink testified those three figures  
15 were double counted, but it's still over the dollar amount that  
16 would allow that enhancement .

17 So, the actual dollar amount -- it was \$306,205.68. And  
18 \$3,669 -- if you give me an opportunity I'm going to subtract that  
19 right now . We had done that before and provided that, but I don't  
20 have that off the --

21 THE COURT: The point is that it's well over 200,000 .

22 MS. HOUSTON: Well over 200,000 .

23 THE COURT: Correct .

24 Okay. Anything else that -- Miss Houston ?

25 MS. HOUSTON: No, Your Honor, not with respect to the loss

1 amount.

2 THE COURT: I have on my desk here, new Government  
3 Exhibits. What do these relate to?

4 MS. HOUSTON: Some of them are exhibits -- I wanted to  
5 give a complete packet. I have given one to the Court. Some of  
6 them relate to the Government's motion to reconsider the number of  
7 victims, but some of them are exhibits that have already been  
8 entered. I wanted to make sure everybody had a complete packet.

9 So, Government's Exhibit, Amended Exhibit A and  
10 Government's Exhibit B and C have already been entered into  
11 evidence or filed with Government's motions. The remaining  
12 exhibits, Amended C through H just reference the Government's  
13 argument relating to the number of victims.

14 THE COURT: All right. We'll talk about that when we  
15 discuss that issue, but for now, the objection as to the amount of  
16 loss is overruled.

17 I think the evidence is really overwhelming based on the  
18 evidence at trial and what was presented at the earlier sentencing  
19 hearing that the amount of the loss is somewhere well north of  
20 \$200,000 in this case.

21 And that is the cutoff for the next loss figure.

22 So, under 2 B 1.1 B 1 G, you have to add 12 to the  
23 offense level for the amount of the loss. That's if the loss is  
24 somewhere between 200,000 and 400,000. And the loss here is  
25 roughly \$300,000.

1           And that's well supported by the evidence presented by  
2   Inspector Frink at the last hearing as well as the evidence  
3   presented at the trial and in the absence of any evidence to the  
4   contrary from the Defendant. I find that to be credible, and  
5   that's the amount of the loss that I am finding.

6           Okay. The next issue deals with -- Mr. Harris filed an  
7   objection orally at the last sentencing hearing, and that dealt  
8   with paragraph 72 of the -- of the presentence report.

9           And paragraph 72 deals with a prior conviction that Mr.  
10   Harris has sustained, or it is alleged that he sustained back in  
11   2008. So, I think, Mr. Foley, you wanted an opportunity to look at  
12   some of the records and to see if that -- if that is a bonafide  
13   conviction and whether it should be includable under the criminal  
14   history computation, is that right?

15           MR. FOLEY: Yes, Your Honor.

16           THE COURT: All right. So, I'll hear from you on that  
17   issue.

18           MR. FOLEY: Since the last hearing, Mr. Beier provided  
19   probably to the Court as well, I am assuming, a document file  
20   marked February 24, 2011 from Judge Cantrell's Court, Lake County  
21   Court, Lake Superior Court County Division 3 in Crown Point.

22           And I after reviewing that, I have to agree with  
23   probation, although my client doesn't, that he was convicted. In  
24   paragraph 4, it says that conviction of Class B felony stand, the  
25   Defendant be sentenced to one day, Lake County jail, credit for

1 time served.

2 At the bottom it's agreed by both prosecution and the  
3 defense attorney Mr. Fontinez (phonetic) and signed by the Judge  
4 under a sentence that says "granted and so ordered."

5 To me, that is a conviction and sentence, so, I have to  
6 withdraw that objection although my client --

7 THE COURT: All right. Then -- then that objection is  
8 going to be shown as withdrawn. This -- it's clear that he's got a  
9 prior conviction.

10 What the document says, and I'm going to order that the  
11 document be included as part of the record in this case.

12 So, Miss Houston, if you would, just approach the bench.

13 MS. HOUSTON: Yes, Your Honor.

14 THE COURT: And I'm going to ask that you mark this  
15 exhibit so that it's made part of the record.

16 MS. HOUSTON: Thank you, Your Honor.

17 (Government marking document.)

18 MS. HOUSTON: Your Honor, I have marked it as  
19 Government's Exhibit I.

20 THE COURT: Okay. Any objection to I, Mr. Foley?

21 MR. FOLEY: Your Honor, I'm -- is "I" one of the exhibits  
22 that was given to me today?

23 THE COURT: Yes. This is what Mr. Beier had previously  
24 presented to your office. I just want it made part of the record.

25 MR. FOLEY: That's what I saw, I'm sorry. I thought it

1 was something else . I'm sorry.

2 No, I have no objection .

3 THE COURT: So, Government's Exhibit I is an agreed  
4 sentence stipulation entered into between the State of Indiana and  
5 Willie J. Harris, and what it essentially says is that Mr. Harris  
6 -- there was a bench trial held on December 18, 2008 on a  
7 misdemeanor charge of harassment . It was a Class B misdemeanor . He  
8 was found guilty . And the parties stipulated to a one day jail  
9 sentence to be given -- to be served in the Lake County jail . And  
10 the reason it was a stipulated sentence was because in the  
11 meantime , the Defendant was indicted in this case .

12 So, essentially , the state authorities arrived at an  
13 agreed sentence , and the matter then was closed , but this agreement  
14 is -- as to the sentencing , was signed by Judge Cantrell of the  
15 Lake Superior Court .

16 It was ordering the sentence imposed , and it's a prior  
17 conviction , and it's really that simple .

18 So, I think Government's Exhibit I supports what is  
19 contained in paragraph 72 . As a result there is one criminal  
20 history point for the Defendant having been found guilty at that  
21 bench trial and being sentenced for that crime of harassment .

22 So, the objection has been withdrawn . If it wasn't  
23 withdrawn , I would have overruled it .

24 All right . So, the last issue is whether we should -- I  
25 should reconsider the victim adjustment in this case .

1 Miss Houston, let's talk about whether I should  
2 reconsider it. I mean, it's -- ordinarily, it's not a chance for  
3 do over. At the last hearing, you conceded that the victims were  
4 somewhere between 10 and 50, and by circumstances of this case,  
5 having -- the sentencing having been continued, you're now asking  
6 me to reevaluate that. Why should I do that.

7 That's sort of getting at the procedural question that  
8 Mr. Foley is raising. Let's talk about that first.

9 MS. HOUSTON: Your Honor, under the Crime Victim Rights  
10 Act and the Victim Restitution Rights Act, and Mandatory Victim  
11 Restitution s Act, the Government is obligated to present to the  
12 Court the number of victims. And while the guidelines are  
13 advisory, under -- as I stated in my motion to reconsider, under  
14 the Sentencing Guidelines, Section 2 B 1.1 B 2 B, Application Note  
15 4 E, it defines victims differently.

16 In identity theft cases, the Congress and the Sentencing  
17 Guidelines have gone beyond in order to identify identity theft  
18 victims. In this case, it's the means of identification. And what  
19 was presented to the Court originally was a list of the authorized  
20 users with the amended sentencing exhibit that I have presented to  
21 the Court --

22 THE COURT: Before we get into the substance of it --

23 MS. HOUSTON: Okay.

24 THE COURT: -- let me --

25 MS. HOUSTON: I'm sorry. The main reason that the

1 Government feels that the Court can and should reconsider it is  
2 because of the laws that require us to present to the Court the  
3 victims who are associated with that case. The victims that were  
4 identified and that the Government agreed were victims last -- at  
5 the last sentencing hearing, didn't incorporate those victims whose  
6 means of identification was utilized even though there was no loss  
7 sustained.

8 THE COURT: I understand. I understand.

9 MS. HOUSTON: So, that's --

10 THE COURT: At the last sentencing hearing, I was unaware  
11 of Application Note 4 E. I think that's where the disconnect was.  
12 And I don't think you called it to my attention either.

13 MS. HOUSTON: I didn't.

14 THE COURT: But you have now in your Motion To  
15 Reconsider.

16 MS. HOUSTON: That's correct, Your Honor.

17 THE COURT: Mr. Foley, let's talk about process first  
18 before we get into the argument itself.

19 You know, I -- if I find that I made an error, why can't  
20 I correct the error. What's wrong with that?

21 MR. FOLEY: Well, first of all, Your Honor, I have --  
22 there is nothing wrong with doing that.

23 However, obviously, there is an interest in finality in  
24 any legal proceeding. Had we done the entire sentencing the last  
25 time, which we didn't of course, this issue would be moot.

1           We were -- we were given the opportunity, the Government  
2 as well as myself, to present any evidence on any issue with regard  
3 to pending motions especially with regard to the sentencing  
4 guideline calculation that the Court was ultimately going to make.

5           When I left the last hearing, I was confident that we  
6 were done with evidence. We were done with arguments pertaining to  
7 the guideline calculation. The Government files, you know, at the  
8 eleventh hour a motion asking for reconsideration of what the Court  
9 had already ruled upon.

10           Now, I understand the Court wasn't aware of Application  
11 Note whatever it is, 4 or whatever it is.

12           THE COURT: 4 E.

13           MR. FOLEY: I'm sorry. And the Court had made a ruling  
14 based upon, number one, the evidence presented, and number 2, the  
15 arguments of the parties as well as the Court's own research.

16           At that time what the Court had -- you know what your  
17 decision was. It was based upon more actual or intended victims as  
18 opposed to what the Government is arguing in its motion.

19           I thought that was a well reasoned and good conclusion to  
20 come to, obviously, on my client's behalf. And as I indicated, the  
21 evidence was presented, the arguments were presented, and now the  
22 Government is, without getting into the substance of the motion,  
23 presenting a handful of documents to substantiate a different type  
24 of argument.

25           If, in fact, we are going to go down that road, that's



1 I like reopening the hearing evidentiarily if the Court accepts these  
2 exhibits, and now, in my opinion, I would have to request since I  
3 got a handful of stuff today, a continuance to reexamine this  
4 stuff.

5 We've had a trial. We've had a hearing that was supposed  
6 to dispose of all of these motions.

7 And my opinion I want to see Mr. Harris get sentenced. I  
8 think the Court's opinion was well reasoned, and I believe based  
9 upon the evidence previously presented to this Court that the Court  
10 made the right ruling.

11 Now, you're being asked to evaluate something based on  
12 new evidence, evidence that hasn't been previously submitted to the  
13 Court.

14 They had their opportunity. If they didn't submit the  
15 proper evidence at that time, that's it. It's over.

16 THE COURT: All right. Miss Houston.

17 MS. HOUSTON: First of all --

18 THE COURT: Is this new evidence --

19 MS. HOUSTON: No, your Honor.

20 THE COURT: -- that you intend to offer?

21 MS. HOUSTON: This is a summary of the -- without going  
22 into it, the motion that I filed identifies the victims. Inspector  
23 Frink would testify as to the trial exhibits that were admitted to  
24 support those.

25 So, it's not new evidence. It's already been introduced

1 into -- at trial. So, there are --

2 One moment, your Honor.

3 There are four -- five supporting documents that were not  
4 initially introduced at trial, but even excluding them, we still  
5 get over the 50 victims. And those 50 plus victims, the evidence  
6 supporting that was -- is based upon evidence that was introduced  
7 at trial.

8 So, there is no new evidence being introduced, if we  
9 exclude the supporting documents that Inspector Frink would testify  
10 to support some of these victims. But the 50 plus victims is based  
11 on exhibits that were already introduced at trial.

12 We just compiled them to show that these are victims who  
13 are identified in the trial exhibits and during the trial. And as  
14 I previously argued, Your Honor, under the CVRA the VRRRA and the  
15 Mandatory Victim Restitution Act, they have taken into  
16 consideration that identity theft victims are a different victim  
17 and expanded the definition of what a victim is.

18 So, if you only look at Amended C exhibit, then -- which  
19 is just adding so that Inspector Frink, he could say, these are the  
20 supporting documents that were admitted at trial, you still have  
21 over 50 victims.

22 THE COURT: All right. I'm going to allow her to present  
23 this. I approached this incorrectly from a legal perspective. I  
24 don't believe there is really any new evidence being presented  
25 here. It's just being argued in a different way, arguing a

1 different legal point.

2 So, present whatever you want to present on the issue,  
3 Miss Houston.

4 MS. HOUSTON: Your Honor, I call Inspector Frink.

5 THE COURT: All right. Sir, come on forward please.  
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INSPECTOR CECIL FRINK

called as a witness by the Government, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION BY :

MS. HOUSTON:

Q Inspector Frink, could you state your name for the record, your title and the agency for whom you're currently employed?

A Cecil Frink. F R I N K.

I'm a US Postal Inspector, team leader.

Q And prior to your testimony today, did you have an opportunity to look at Government's Exhibit Amended C?

A Yes.

Q What is Government's Exhibit Amended C?

A That is a list of the victims that were identified earlier, and I went back, had an opportunity to go through all exhibits presented during trial and added exactly what exhibit, the trial exhibit each victim was listed on.

Q And you did this this week, didn't you?

A Yes, a couple days ago.

Q And on your list, you have how many individuals -- how many individuals and or entities identified as victims?

A 69.

Q And looking at Government's Exhibit C, there were six additional individuals and or entities added, is that correct?

1 A Yes.

2 Q And that's why Amended C is presented today, is that correct?

3 A Yes.

4 Q Who were the additional individuals that were added?

5 A There were four people that I found on an American Express  
6 Exhibit. Last name Whittie. Taylor, Goldstein, Wobble and Shaw, I  
7 believe.

8 Not Whittie, but the Taylor, Goldstein, Wobble and Shaw.

9 Q What were the additional entities or corporations that were  
10 added?

11 A Apple and Best Buy.

12 MS. HOUSTON: Your Honor, the Government would like to  
13 substitute -- would like to enter into evidence amended sentencing  
14 Exhibit C.

15 THE COURT: All right. Any objection Mr. Foley?

16 MR. FOLEY: Yes, Your Honor until I've had a chance to  
17 cross-examine the witness on each and every item that's been  
18 entered here, I don't know that it's -- foundation.

19 THE COURT: Overruled. Amended C is admitted. You can  
20 cross-examine him on the contents of the exhibit.

21 (Whereupon, evidence previously marked

22 Government's Amended Exhibit C

23 Was admitted in evidence.)

24 MS. HOUSTON:

25 Q Looking at Government's Exhibit D for sentencing, Inspector

1 Frink, what is Government's Exhibit D?

2 A D is a spreadsheet from Chase Bank from Diane Henn.

3 Q And she is the regional investigator for Chase?

4 A Yes.

5 Q JP Morgan Chase?

6 A Yes.

7 Q Just for clarification, Washington Mutual is part of Chase  
8 now, is that correct?

9 A Yes.

10 Q So if Washington Mutual is referenced in anything, it's part  
11 of Chase?

12 A Correct.

13 Q Now, exactly what is -- how does Government's Exhibit D equate  
14 to Amended C with respect to Daryl Watkins?

15 A Couple of the victims that were listed on Amended C and on C  
16 when we went back through all the trial documents, their names were  
17 not listed in the trial documents, but they have been listed as  
18 victims. And when I went back through the -- my records, the -- I  
19 got the names from a spreadsheet that Diane Henn had sent me when  
20 the investigation started, reference Darriell Watkins.

21 Q So, with respect to the -- looking at Amended C, Alexander and  
22 Bender who are number 3 and 4, and also number 30,  
23 Mahlke, M A H L K E, that's all from this Government's Exhibit D,  
24 is that correct?

25 A Yes.

1 Q That is how those victims were identified?

2 A Yes.

3 Q What was Darriell Watkins with respect to -- was she an  
4 authorized user?

5 A Yes, she was added as an authorized user to each of those  
6 individual 's accounts.

7 Q And Miss Henn advised that they were compromised accounts?

8 A Yes.

9 MS. HOUSTON: Your Honor, the Government would like to  
10 enter into evidence Government's Exhibit D.

11 THE COURT: Any objection?

12 MR. FOLEY: Was that D?

13 MS. HOUSTON: D as in David.

14 MR. FOLEY: No objection.

15 THE COURT: All right. D is admitted.

16 (Whereupon, evidence previously marked  
17 Government's Exhibit D  
18 Were admitted in evidence.)

19 MS. HOUSTON:

20 Q Now, with respect to D, you have Mister -- you have Joan  
21 Wheeler and Kevin Wheeler. What was the connection on that with  
22 Exhibit D with the Wheelers?

23 A I believe Miss Henn found that through the phone numbers that  
24 had called in to Chase.

25 Q What was the phone number?

1 A (404) 567-2322 .

2 Q And your investigation revealed that that number had what  
3 connection to this case?

4 A That phone number had access to a couple accounts and that was  
5 the phone number that Mr. Harris called Munster PD Detective from.

6 Q Is that detective Mike Janiga?

7 A Yes.

8 Q Is that referenced in Detective Janiga's report?

9 A Yes, I believe so.

10 Q With respect to Government's Exhibit E, what is that?

11 A That's another spreadsheet that I had received from Miss Henn,  
12 and I had listed the individuals on this sheet as victims. And one  
13 of the individuals, I believe, was not entered into the trial  
14 exhibits.

15 Q Is that number 5, B O H L?

16 A Yes.

17 Q Is that George Bohl?

18 A Yes.

19 Q And there are other victims whose information was introduced  
20 at trial on Government's Exhibit E. Is that correct?

21 A Correct.

22 Q And the supporting or trial exhibits associated with them are  
23 contained within Government's Exhibit Amended C, correct?

24 A Correct.

25 THE COURT: I don't see where you're referencing.



1 MS. HOUSTON: I'm sorry.

2 THE COURT: On E.

3 MS. HOUSTON: Look at the -- on Government's Exhibit E,  
4 it's the last name.

5 THE COURT: Oh, I see. I got it.

6 MS. HOUSTON: Where it says George Bohl.

7 THE COURT: The very bottom of the page.

8 MS. HOUSTON:

9 Q Is that correct, Inspector Frink?

10 A Yes.

11 Q And it provides -- is there another connection there with this  
12 case in terms of the address?

13 A Those all went to the 4447 address in Gary.

14 Q And is that one of the addresses that came up during the  
15 course of the trial?

16 A Yes.

17 MS. HOUSTON: And, Your Honor, with respect to  
18 Government's Exhibit E, not only would we like to enter it into  
19 evidence, but I noted that part of the account numbers haven't been  
20 redacted, and I'd like to redact that before it's actually part of  
21 the record.

22 THE COURT: Any objection to E?

23 MR. FOLEY: No.

24 THE COURT: All right. It's admitted and it can be  
25 redacted, the account numbers.

1

2

(whereupon, evidence previously marked

3

Government's Exhibit E

4

Was admitted in evidence.)

5

MS. HOUSTON:

6

Q I would like you to look at Government's Exhibit F. Which  
7 victim is this in reference to?

8

A Randall Borgman.

9

Q Mr. Borgman actually testified at trial, is that correct?

10

A Correct.

11

Q And what are these records in reference to?

12

A These are reference to a -- when we did a search warrant in

13

Atlanta, when we recovered a Chase credit card and an ID in the

14

named of Jarod Moore, the Chase credit card had the name of Jarod

15

Moore. And once I contacted Diann Henn to ask who account that

16

card was associated with, these are the documents she faxed back to

17

me that they were associated with Randall Borgman.

18

Q Just so we are clear with respect to Government's Exhibit F,

19

on the fourth page, it actually gives the last four numbers of that

20

credit card number, is that correct?

21

A Yes.

22

Q And what are the last four numbers?

23

A 1292.

24

Q 1292?

25

A Yes.

1 Q And then when you turn to the next page, does it provide  
2 Randall Borgman's name?

3 A Yes.

4 Q Does it also have the 1292 account number?

5 A Yes.

6 Q And then when you turn to the next page of that document, it  
7 also has Mr. Borgman's name and the account number ending in 1292  
8 in the upper right hand corner?

9 A Yes.

10 MS. HOUSTON: Your Honor, the Government would ask to  
11 enter into evidence Government's Exhibit F.

12 THE COURT: Any objection?

13 MR. FOLEY: No, your Honor.

14 THE COURT: All right. F is admitted.

15 (whereupon, evidence previously marked

16 Government's Exhibit F

17 Was admitted in evidence.)

18 MS. HOUSTON:

19 Q I'd like you to look at Government's Exhibit G 1.

20 A Okay.

21 Q What is G 1?

22 A These are complaints filed with the US Postal Inspection  
23 Service.

24 Q And I'll have you look at -- so, is G 1 and G 2, are they the  
25 same?

1 A No, they are two different complaints. One from a Howard  
2 Tessler and one from Stephen Sandon.

3 Q G 1 is Mr. Tessler?

4 A Yes.

5 Q And in G 1, in summary, what is he saying? What is this  
6 complaint?

7 A Somebody in Georgia by the name of Katrina Thompson used his  
8 credit card.

9 Q Does he say Chase Visa, Citibank Mastercard, Discover and Bank  
10 America Visa?

11 A Yes.

12 Q And this is a two page document, correct?

13 A Yes.

14 Q And on the second page, it references an account number, is  
15 that correct, at the bottom?

16 A Yes.

17 Q And it's a Bank of America account?

18 A Yes.

19 Q Ending in what?

20 A 6688.

21 Q And this is a -- this theft complaint is a document in the  
22 regular course of business by the US Postal Inspection Service, is  
23 that correct?

24 A Correct.

25 Q With respect to G 2, that is -- you said Stephen Sandon

1 S A N D O N ?

2 A Yes.

3 Q Is this also a Bank of America account ?

4 A Yes.

5 Q What does it end in ?

6 A 4178.

7 Q And does it indicate in Mr. Sandon in G 2, who was added as  
8 the -- who compromised his account ?

9 A It says that Robert Sanders .

10 Q Under the word "suspects" ?

11 A Yeah, it says "address changed through Robert Sanders ."

12 Q And just so -- and it indicates Mr. Sandon is a resident of  
13 Florida , correct ?

14 A Correct .

15 Q Mr. Tessler is a resident of Illinois ?

16 A Correct .

17 MS. HOUSTON: Your Honor, the Government would ask --

18 MS. HOUSTON:

19 Q And these two individuals are identified as victims on Amended  
20 C, correct ?

21 A C and -- C and Amended C.

22 THE COURT: All right.

23 MS. HOUSTON: Your honor, the Government requests  
24 permission to enter into evidence G 1 and G 2.

25 THE COURT: Any objection ?

1 MR. FOLEY: No, your Honor.

2 THE COURT: All right. They are both admitted.

3 (Whereupon, evidence previously marked

4 Government's Exhibit G 1 and G 2

5 Were admitted in evidence.)

6 MS. HOUSTON:

7 Q Finally, looking at Government's Exhibit H, this is the  
8 timeline date order, added authorized user list?

9 A Yes.

10 Q And you testified utilizing this document at trial, is that  
11 correct?

12 A Correct.

13 Q With respect to this, this only reflects individuals who were  
14 added as authorized users?

15 A Correct.

16 Q But it doesn't preclude the individual where they actually  
17 made purchases to?

18 A Correct.

19 Q This is based on loss amounts only?

20 A No. These are just the accounts where we knew who exactly had  
21 been added as authorized user.

22 Q And the names on Government's Exhibit H is also reflected in  
23 Amended C, correct?

24 A Yes.

25 MS. HOUSTON: Your Honor, the Government would request

1 permission to enter into evidence Government's Exhibit H.

2 THE COURT: Any objection to H?

3 MR. FOLEY: No.

4 THE COURT: All right. It's admitted.

5 (whereupon, evidence previously marked

6 Government's Exhibit H

7 Was admitted in evidence.)

8 MS. HOUSTON:

9 Q Inspector Frink, with respect to looking at Amended C, number  
10 55, is J Wheeler which we have identified as Joan Wheeler. That's  
11 based on the spreadsheet, correct, of Darriell Watkins?

12 A Yes.

13 Q Which would be Exhibit D. And then the -- with respect to  
14 victim number 45, Mr. Sandon that's based on the mail theft  
15 complaint, G 2, correct?

16 A Correct.

17 Q And with respect to Mr. Tessler, that's based on Government's  
18 Exhibit -- which is number 51, that's based on G 1, correct?

19 A Correct.

20 Q And then under 49, that's Jeff Suvas Chand, and he actually  
21 testified at trial, is that correct?

22 A Correct.

23 Q And a number of these individuals who are identified as  
24 victims, at least 15 of them or more, testified at the trial too  
25 that their accounts had been compromised?

1 A Yes.

2 MS. HOUSTON: I have no further questions, your Honor.

3 THE COURT: All right. Cross.

4

5 MS. HOUSTON: And, Your Honor, the Government would ask  
6 that Exhibit 271 A on our motion be stricken because we determined  
7 that that exhibit was not entered into evidence.

8 THE COURT: Okay. Very well. I'll show it stricken.

9 CROSS-EXAMINATION BY:

10 MR. FOLEY.

11 Q You have the exhibits before you?

12 A Yes, sir.

13 Q Copies of them.

14 I believe it's Exhibit C?

15 A Yes, sir.

16 Q The individuals listed on Exhibit C, there is a total of 63?

17 A Yes.

18 Q Of those -- those entities or individuals located -- listed on  
19 Exhibit C, several of them are businesses, is that correct?

20 And I'm referring you basically to the bottom, the last  
21 number of them, starting with 63 and working our way up, Sun Trust,  
22 that is a business, is that correct, a bank?

23 A Yes, sir.

24 Q And Gucci, that is a business?

25 A Yes, sir.



1 Q Harris Bank, that's a bank?

2 A Yes.

3 Q Discover card is a credit card company?

4 A Yes.

5 Q Citibank same thing?

6 A Yes.

7 Q Chase Bank same --

8 A Yes.

9 Q American Express the same?

10 A Yes.

11 Q So, the last one, two, three, four, five, six, seven of those  
12 are not individuals, but they are businesses, is that correct?

13 A Correct.

14 Q Are there any other businesses listed on Exhibit C or is that  
15 it?

16 A When I completed Amended C, I added Apple and Best Buy.

17 Q Okay. Now, the testimony at trial, you were here during the  
18 whole trial, right?

19 A Yes, sir.

20 Q And the testimony at trial was that as far as actual losses  
21 go, that the actual monetary losses were sustained by the  
22 businesses, is that right?

23 A Yes, sir.

24 Q That none of the individuals who had their credit cards or  
25 identities in any way compromised had lost anything of a monetary

1 value, is that right ?

2 A Yes, sir .

3 Q Is that true for -- also for the people that -- if I remember  
4 correctly, the last time we were here, there was an exhibit, I  
5 believe an Exhibit A that was submitted regarding actual and  
6 intended losses?

7 A Correct .

8 Q And the actual losses, I believe there was about 20 some  
9 victims that were listed?

10 A I'm not exactly sure the exact number, but yeah.

11 Q But a lot less than 63, it was more like 20 some, 30 some,  
12 something like that?

13 A Yeah.

14 Q Since then we have added a whole bunch more because of the  
15 motion to reconsider, is that correct?

16 A I don't know if it was because of that, but I know I had  
17 presented -- given the US Attorney all of these victims prior to  
18 that, so, but not everyone had suffered a financial loss to their  
19 accounts .

20 Q And of the people that were added, the additional people that  
21 were added since the last time we were here, none of those have  
22 actually suffered a financial loss, is that correct?

23 A No. Not a financial loss .

24 Q Right. I understand .

25 A Yeah.

1 Q Now, drawing your attention to the amended Exhibit C, you have  
2 -- on the far right corner, you got the exhibit in front of you?

3 A Yes, sir.

4 Q On the far right hand corner, you -- somebody -- I should say  
5 the exhibit refers to where in the record or how these things are  
6 evidenced, is that correct?

7 A Correct.

8 Q And the -- when you have a number in that column, that's  
9 referring to an exhibit number?

10 A Yeah, to a trial exhibit number.

11 Q Okay. So, all of those things were admitted -- those numbers,  
12 numerical designations, all of those were admitted as exhibits  
13 during the course of the trial?

14 A Yes, sir.

15 Q The other items that are referred to, like for example case --  
16 Chase spreadsheet dash Darriell Watkins, those were not introduced  
17 during the course of the trial.

18 Is that correct?

19 A Correct.

20 Q And then where it says see Chase spreadsheet - fraud case,  
21 that also was not an exhibit, is that right?

22 A Correct.

23 Q So, those things were not proven beyond a reasonable doubt at  
24 the trial because they weren't admitted as exhibits, is that right?

25 A No, sir. They were just not admitted as exhibits in trial.

1 Q The -- also item six where it says photo of Chase card with  
2 Moore ID in Atlanta, it says "testified."

3 What does that mean?

4 A The photo with the Chase card with the ID of Moore was one of  
5 the exhibits. I didn't put the exhibit number down. Mr. Borgman  
6 came in and testified at trial.

7 Q That was also, I think, testified to at the last sentencing  
8 hearing too, right. That --

9 A I believe so.

10 Q Okay. And then item 30. Chase spreadsheet once again  
11 Darriell Watkins same thing it wasn't introduced at trial?

12 A Correct.

13 Q Any other references to Chase spreadsheet, Darriell Watkins,  
14 those were not admitted exhibits?

15 A Correct.

16 Q USPS mail theft complaint on item 45, that also was not an  
17 exhibit at trial, right?

18 A Correct.

19 Q And then item 51, same thing, right?

20 A Yes, sir

21 Q Now of all of these victims that are alleged or some of which  
22 have been proven at trial, some of which are recently alleged, of  
23 all of them, have you established that Willie Harris directly was  
24 involved in the -- in the identity theft or card fraud or whatever  
25 involved in each and every one of these incidents?

1 A I can't say yes to that.

2 Q You can't say yes. Okay.

3 Is it true, sir, that in some instances, that other  
4 individuals acted to obtain the identity information of some of  
5 these alleged victims?

6 A I can't say yes to that, because I don't know exactly how they  
7 received or obtain the victim's information.

8 Q Okay. So, in some of these -- obviously, the charge here --  
9 one of the charges was conspiracy. And Mr. Harris has been  
10 convicted of that, right?

11 A Yes, sir.

12 Q But in some of these instances, you don't have any direct  
13 evidence that you know of that links him specifically to any -- to  
14 some of these instances, is that correct?

15 A I would say yes to that.

16 Q But in every instance, is it true that some co-conspirator is  
17 linked to all of these?

18 A I would say no because some of these were identified by the  
19 banks based on phone numbers that accessed the accounts, based on  
20 the addresses that the cards were sent to, based on the authorized  
21 users who were added.

22 So, it's multiple reasons why these -- that link these  
23 names together to this case.

24 Q Right.

25 And that's -- I think we are -- maybe you misunderstood

1 my question .

2 Is it true that in every of these instances , that someone  
3 in this case, one of the defendants or unindicted coconspirators ,  
4 somehow was linked to each and every one of these transactions ?

5 A Yes. Somebody was linked to them.

6 MS. HOUSTON: I just --

7 MR. FOLEY:

8 Q However it didn't necessarily have to be Willie Harris  
9 directly ?

10 A Correct .

11 Q And just so that we are fair in sentencing here, was this  
12 Exhibit C Amended C, was that a similar exhibit introduced in  
13 sentencings of other co-defendants in this case?

14 A Amended C. No. I just created that.

15 Q Okay.

16 A Couple days ago.

17 Q Okay. Were -- was something similar to that introduced in the  
18 other sentencings , if you know ?

19 A Yes. For every individual involved , there was a victim  
20 list --

21 Q Okay?

22 A -- submitted . Yes.

23 Q And to your knowledge -- you were here for each sentencing ?

24 A Might have been one or two that I was out of town for couldn't  
25 make .

1 Q But you have a ready, firsthand knowledge of what happened at  
2 those sentencings ?

3 A I know for each individual I was the one who created the  
4 victim list.

5 Q Okay. Was there a victim list of over 50 individuals  
6 introduced in each one of those sentencings ?

7 A No.

8 Q Okay. Were there victim lists that were fewer than 50?

9 A Yes.

10 Q Okay. And were there any where victims were listed in a  
11 number of over 50?

12 A Say that again.

13 Q Were there -- besides Mr. Harris's sentencing here today, did  
14 you -- are you aware of in any other exhibits that were introduced  
15 during sentencings of any other co-defendant that included victims  
16 alleged in a number of 50 or more?

17 A It's possible , but without looking at them, I can't say  
18 definitely .

19 Q So you don't know for sure?

20 A No, sir .

21 Q Okay.

22 And with regard to the monetary losses claimed concerning  
23 co-defendants , the amounts that were introduced in those  
24 sentencings were much lower than for this Defendant , is that  
25 correct?

1 A It's possible, yes.

2 Q Okay.

3 MR. FOLEY: That's all I have. Thanks.

4 THE COURT: Anything else, Miss Houston?

5 REDIRECT EXAMINATION BY:

6 MS. HOUSTON:

7 Q Inspector Frink, Mr. Folly kept using the word "instances."

8 I just want to make sure we are clear, when we talk about  
9 instances, when you look at Government's Exhibit D, you reference  
10 the phone number (404) 567-2322. And how is this -- how is that  
11 phone number associated with this case again?

12 A It had accessed a couple victims' accounts and Mr. Harris  
13 called Munster PD Detective Janiga from that phone number.

14 Q And the victims whose accounts were accessed, they were  
15 victims whose information was entered at trial.

16 Is that correct?

17 A Yes. I believe so.

18 Q And with respect to -- he talked about instances, but he  
19 wasn't clear, the 4447 Grant Street in Gary, Indiana, that's one of  
20 the addresses that was associated with this fraud scheme during the  
21 trial, is that correct?

22 A Correct.

23 Q And with respect to Darriell Watkins, during the course of the  
24 investigation, during the course of the trial, was it indicated  
25 that she was an unindicted coconspirator in this case?



1 A Yes.

2 Q And with respect to Government's Exhibit E, when you look at  
3 the bottom of the page, Mr. Bohl's name, B O H L, again what  
4 address is associated with the change that was made to his Chase  
5 account?

6 A 4447 address in Gary.

7 Q And with respect to Government's Exhibit F, and Mr. Boardman,  
8 that specifically relates back to a card that was actually taken  
9 during the execution of the search warrant, correct?

10 A Correct.

11 Q And it had a Jarod Moore ID and the credit card?

12 A Yeah, the name on the credit card was Jarod Moore.

13 Q And with respect to G 1 and G 2, those are -- let's talk about  
14 G 2.

15 It identifies Robert Sanders as the person who  
16 compromised Mr. Sandon's account?

17 A Yes. The name that was added to that card.

18 Q And Mr. Sanders was one of the co-conspirators in this case,  
19 is that correct?

20 A Yes.

21 Q And with respect to Mr. Tessler in Government's Exhibit G 1,  
22 the names Katrina Thomas or Thompson were added to his account?

23 A Yes.

24 Q And was there testimony from Alnese and Diontria Frazier that  
25 they used that account number?

1 A They used that name. Yes.

2 Q And they obtained IDs in that name, correct?

3 A Yes.

4 Q And during the course of the trial, was it acknowledged that  
5 some of this criminal conduct actually occurred in Georgia?

6 A Yes.

7 MS. HOUSTON: Nothing further, your Honor.

8 THE COURT: All right. Let me ask you this.

9 What I want to make clear on, Amended C that's where you  
10 have all of what you're saying are victims in this case?

11 A Yes, sir.

12 THE COURT: I just want to focus on the individuals, so,  
13 1 through 60 are individual people, correct?

14 A Yes, sir.

15 THE COURT: And what I want to know is for each one of  
16 those people, did they have -- did something actually happen to  
17 their account as opposed to simply a Defendant or a co-conspirator  
18 possessing their identification?

19 A Either that account was accessed, meaning somebody called in  
20 trying to change the name or the address on the credit card.

21 THE COURT: Or an actual new card was issued under  
22 another name?

23 A Yes, sir.

24 THE COURT: All right.

25 Anything else, Mr. Foley?

1 MR. FOLEY: Yes, if I may.

2 THE COURT: Yeah, sure.

3 RECROSS-EXAMINATION BY:

4 MR. FOLEY:

5 Q Just to follow up with what the Court asked, the -- we know  
6 that obviously, certain people have had their accounts compromised,  
7 have had authorized -- quote, unquote "authorized", but  
8 unauthorized people added to their account, and cash advances,  
9 credit card purchases. Obviously, that's all illegal. It's  
10 fraudulent. And the Defendant certainly was convicted of some of  
11 that.

12 With regard to the individuals the Court was referring  
13 to, there are some people whose means of identification were  
14 somehow obtained by someone, but they never suffered any loss, is  
15 that right?

16 A Correct.

17 Q And was there -- of all of those individuals, was there anyone  
18 whose means of identification was, say, for example, found on the  
19 Defendant or some other Defendant, but it was never used to your  
20 knowledge?

21 A Yes. There were individuals who were found in the notebooks.

22 Q Okay. So, you've got -- how many people in the notebooks?

23 A I don't recall, top of my head.

24 Q Okay. Well, there were two -- at least two different  
25 notebooks, right?

1 A Yes.

2 Q There was the one that was confiscated in Atlanta, Georgia?

3 A Yes.

4 Q From his car, right?

5 A Yes, sir.

6 Q And I mean, when I say "his," for the record, defendant's.

7 And the other one that I'm aware of was at the bank in Munster, is  
8 that correct?

9 A Correct.

10 Q That you ultimately received from Janiga?

11 A Yeah, Janiga.

12 Q And you have no idea how many names were in those notebooks?

13 A I'm thinking it might have been seven or eight in one from  
14 Munster, and maybe three or four in the one from Atlanta.

15 Q Okay. And to your knowledge those means of identification  
16 that were contained in those notebooks -- and some of them were  
17 complete, some were incomplete, is that right?

18 A I believe all of them had name, addresses, phone numbers,  
19 credit card number, date of birth, Social Security Number.

20 Q But to your -- what you're testifying to here to today, that  
21 those individuals -- that information that's listed in those  
22 notebooks, that -- to your knowledge, nothing else was done with  
23 those means of identification besides being in those notebooks?

24 A Correct.

25 Q Okay. Is there any -- besides that, is there any one else --

1 else's information that was found someplace besides one of those  
2 notebooks, that -- that that's all that was done. It was found and  
3 you have no knowledge or information or evidence that anything else  
4 was done?

5 A Not that I know of.

6 Q Okay. So, with regard to the rest of them, something else was  
7 done with the information like a phone call made to a credit card  
8 company trying to compromise the account or add a user or something  
9 like that?

10 A Yes, sir.

11 Q Were there any other notebooks that were found besides the two  
12 that I mentioned?

13 A No, sir.

14 Q Okay. Were -- was there any other information pertaining to  
15 identity -- identification, individual identification that was  
16 found on, say, a slip of paper, or somewhere else?

17 A Yes. That was a slip of paper that had been tore out a  
18 notebook that was found on Darriell Watkins at the bank. And I  
19 believe that was Mr. Mark Sulsman, and he came and testified.

20 Q That was one that was compromised?

21 A Yes.

22 Q Is that right?

23 A Yes.

24 Q There was also, I believe, at least one slip of paper that was  
25 found in the defendant's residence with a name and some information

1 on it too, is that right ?

2 A Yes. There was a page that had been ripped out of a notebook  
3 that was on his bedroom floor.

4 Q And that had account -- or identification information on it?

5 A Yes, sir.

6 Q To your knowledge was that information used in any other way  
7 besides being on that slip of paper?

8 A No. I would have to look at that name to -- to know for sure.

9 Q Okay. But to your knowledge as you sit there, you don't know?

10 A Yeah, I don't know.

11 MR. FOLEY: Okay, no other questions.

12 THE COURT: Anything else, Miss Houston.

13 REDIRECT EXAMINATION BY:

14 MS. HOUSTON:

15 Q Just to be clear, Inspector Frink, Amended C is just based on  
16 information of individuals who either suffered a loss or their  
17 identities -- or some attempt was made to access -- to utilize  
18 their personal identifying information through either address  
19 change or -- Amended C represents individuals whose credit cards  
20 were compromised, correct?

21 A Yes.

22 Q It also represents individuals where names were added without  
23 their permission, correct?

24 A Yes.

25 Q This does not include that list of individuals in those two

1 books referenced by Mr. Foley, correct?

2 A I'm just looking at the names, and I'm not seeing some names  
3 that were in the notebook, so, I would say this is -- does not have  
4 the names that were in the notebook.

5 Q So, you went through the exhibits, correct?

6 A Yes.

7 Q And these are trial exhibits that were admitted, correct?

8 A Yes.

9 Q And the other documents, exhibit D, E, F, G and H, those are  
10 just supplemental documents as to how these individuals were  
11 identified based upon the fact that Chase said their accounts were  
12 compromised, correct?

13 A Yes.

14 Q I ask you again, Inspector Frink, these names in Amended C  
15 only represent the victims who have been identified as having their  
16 accounts compromised, is that correct?

17 A Yes.

18 MS. HOUSTON: Thank you, Your Honor.

19 THE COURT: Anything else, Mr. Foley?

20 MR. FOLEY: No.

21 THE COURT: All right. Sir, you may step down.

22 (Witness excused).

23 THE COURT: All right. Anything else that you wish to  
24 present, Miss Houston?

25 MS. HOUSTON: No, your Honor.

1 THE COURT: Mr. Foley, anything else you wish to present  
2 on this issue?

3 MR. FOLEY: No, your Honor.

4 THE COURT: All right. So, I'll hear from you now, Miss  
5 Houston on why I should reconsider my earlier ruling.

6 MS. HOUSTON: Your Honor, is here fine?

7 THE COURT: Yes.

8 MS. HOUSTON: Yes. Your Honor, it's the Government's  
9 position that based upon application note 4 E of the Sentencing  
10 Guideline 2 B 1.1 B 2 B that these victims -- first of all,  
11 "victim" is the ones who suffered an actual loss, which the Court  
12 determined at the prior hearing.

13 In looking -- which is under Application Note 1 where you  
14 talk about the actual loss.

15 But they also talk about the fact that a person includes  
16 any individual, corporations or companies. So, the individuals  
17 that were identified in Amended C and the corporations identified  
18 which added Apple and Best Buy under Application Note One are  
19 applicable for those were the actual loss.

20 Now, in going to Application Note 4, it's been carved  
21 out, a special argument because of identity theft victims, that you  
22 don't have to suffer a loss. It's any individual whose means of  
23 identification was used unlawfully or without authority.

24 So, in incorporating all -- if you look at the individual  
25 victims, 1 through 60 of Amended C, all of these individuals' means



1 of identification was used without their authority.

2 And so, it's the Government's position that based upon --  
3 as I earlier argued, the Crime Victims Rights Act and the Mandatory  
4 Victims Right Act and the V R R A, that I'm obligated to present to  
5 the Court all of the victims whose means of identification was used  
6 without their authority.

7 With respect to the businesses, in Amended C, 61 through  
8 69, they fit under Application Note 1 because they are corporations  
9 or businesses. And so, it's the Government's position that we have  
10 a total of 69 victims.

11 Even if the Court were to carve out the -- from Amended  
12 C, number 3, 4, 5, 30, 45, 51 and 55, you would still have over 50  
13 victims.

14 And in this case, the -- it's clear there are over 50  
15 victims based upon the definition of what a victim is and the  
16 application notes. And we'd ask that the Court reconsider the  
17 number of victims as being over 50.

18 THE COURT: All right. Thank you, Miss Houston.

19 Mr. Foley, any response?

20 MR. FOLEY: Yes. Just for the record, I would renew the  
21 motion that I made previously about the Court reconsidering, but in  
22 light of the fact we have heard evidence, yeah, I just want to say  
23 a couple things.

24 It's a close call, even if you accept everything on  
25 Exhibit C as being -- Amended C, I think it's 63, and some of them

1 are not double counted but almost double counted because you have  
2 financial institutions that actually incurred the financial loss ,  
3 and a number of victims who are double counted within that.

4 The other thing that I think is hazy and questionable is  
5 the unlawful use or without authority requirement of the  
6 Application Note 4 E, in that the inspector did testify under  
7 re-redirect, I believe it was, that all of these people listed on  
8 Amended C had something done to compromise their account or  
9 attempted to compromise their account, and that these people from  
10 his recollection weren't listed or weren't some of the individuals  
11 who were in these notebooks.

12 And I'm not sure if he's correct in that testimony or not  
13 because he seemed a little shaky with regard to that with regard to  
14 his recollection .

15 However, there is a number of exhibits listed in this  
16 Amended C that I just got today, and I don't know if the notebooks  
17 are one of these exhibits . I don't know .

18 If that is in fact true, then that would be incorrect --  
19 it would be something that I could cross-examine him on, but I  
20 can't because I don't have the time -- I just received this. I  
21 can't go through hundreds of exhibits to try to cross-examine him  
22 on those points.

23 The only thing I'm saying is actual -- actual , the  
24 victims, no question about it, there is 20 or some that were  
25 testified to in the last hearing .

1           With regard to the subsequent -- the addition of --  
2 additional victims, I'm not sure if I can adequately attack them or  
3 the existence of them.

4           However, if the Court were to grant the reconsideration  
5 and to put the two levels back on Mr. Harris, I would ask and I  
6 will ask in another argument, that the Court consider that the  
7 number of victims are just over the number of 50.

8           It's not like 200 or a hundred or whatever.

9           And that in looking at previously, the sentences of other  
10 defendants, other defendants were not hit with all 60 some victims,  
11 although they are all part of the same conspiracy. I think they  
12 were hit with a lot less and restitution a lot less.

13           Those are just factors that I would ask the Court later  
14 on to consider if the Court chooses to reconsider.

15           THE COURT: All right. I am going to reconsider my  
16 earlier ruling. Under US Sentencing Guideline 2 B 1.1, it provides  
17 for a two level increase if the offense involved 10 or more victims  
18 and a four level increase if the offense involved 50 or more  
19 victims.

20           And earlier in this sentencing hearing, I was somewhat  
21 led astray by Application Note One of the sentencing guidelines.  
22 That's where I was consulting to determine whether or not somebody  
23 is a victim.

24           Unfortunately, the presentence report did not alert me to  
25 -- and frankly, neither did the Government, to Application Note 4

1 E.

2 In any event, which does carve out sort of a special  
3 category of victim of -- identification theft. But Application  
4 Note One defines victim as quote "any person who sustained any part  
5 of the actual loss determined under Subsection B 1"; or B, "Any  
6 individual who sustained bodily injury as a result of the offense."

7 But again, as I note, Application Note 4 E carves out an  
8 exception to or an addendum to the definition of the term "victim"  
9 as a special category of identity theft.

10 So, Application Note 4 E provides that for cases  
11 involving means of identification, "victim" means, quote, "Any  
12 victim as defined in Application Note One," or "Any individual  
13 whose means of identification was used unlawfully or without  
14 authority."

15 What Application Note 4 E is attempting to do is to  
16 account for the impact that identity theft or those types of crimes  
17 have on card holders who may have -- who may not have actually lost  
18 money, these individuals even though they have been fully  
19 compensated or reimbursed, again, even if they have been fully  
20 reimbursed, they must often spend significant time resolving credit  
21 problems and related issues. And such lost time may not be  
22 adequately accounted for in the loss calculation under the  
23 guidelines.

24 That's a quote from United States versus Sandoval,  
25 S A N D O V A L, 668 Fed. 3d, 865 at 868. It's a Seventh Circuit

1 case from 2011.

2 And it is sort of explaining the reason Application Note  
3 4 E exists, and the reason it carves out this additional category  
4 of victims in this type of case.

5 Therefore, so long as an individual's identity was used  
6 for a fraudulent purpose, for example, to obtain a credit card,  
7 they are a "victim" quote, unquote, pursuant to Application Note 4  
8 E.

9 Again see United States versus Sandoval, which is  
10 directly on point. In that case, it involved a similar credit card  
11 fraud scheme as the one we have here.

12 In that case, the Court rejected the defendant's argument  
13 that the people who merely had to replace their credit cards were  
14 not sufficiently inconvenienced by the fraudulent conduct to be  
15 considered as victims under 2 B 1.1, but the Court held that each  
16 of the individuals whose card numbers the victim used, quote, "Had  
17 to spend time talking to his or her respective credit card issuer  
18 to verify the fraudulent charges, reverse the charges and close the  
19 reissue -- and reissue the card." So, it was reasonable for the  
20 Court to conclude that those individuals were victims under the  
21 meaning of 2 B 1.1.

22 See also United States versus Vasquez, 673 Fed 3d, 680.  
23 It's a Seventh Circuit case from 2012.

24 So, the key question is, 4 E only applies if somebody's  
25 means of identification was quote, unquote "used."

1           And what that means is, it has to be quote, "actively  
2 employed to further the purpose of the conspiracy or scheme."

3           That's from United States versus Rabin, R A B I U, 721  
4 Fed. 3d, 467 at 472.

5           In other words, just possessing the identification is not  
6 enough. The Defendant or co-conspirator has to actually attempt to  
7 do something with that fraudulent identification or with that  
8 identification.

9           And in this case, according to Inspector Frink whose  
10 testimony I find to be completely credible, he has put together  
11 this chart, Amended Exhibit C, which lists all of the names of the  
12 victims. And it's the reason I asked him, was there something that  
13 actually happened to these peoples' accounts.

14           In other words, did somebody try to call the credit card  
15 company to add a fraudulent user to the account or to change an  
16 address or to do something. And he said the answer is yes.

17           So, Amended Exhibit C reflects the victims in this case  
18 who in some way, shape or form had their identification used by a  
19 co-conspirator in this case, or by somebody connected to this case  
20 by a variety of means.

21           See also, United States versus Hall, 704 Fed. 3d, 1317.  
22 That is a 11th Circuit case from 1013.

23           What that case holds is that people whose identifying  
24 information has been transferred by the Defendant or a  
25 co-conspirator are not victims when the co-conspirator had not

1 attempted to use the information .

2 And of course, that's distinguishable from our case where  
3 the evidence is that for all of these victims listed in Exhibit --  
4 Amended Exhibit C, the Defendant or others involved in this  
5 conspiracy in some way attempted to access those accounts, and at  
6 that point those people are deemed to be victims under Application  
7 Note 4 E.

8 So, for those reasons, I am going to reconsider my  
9 earlier ruling, and I will apply the victim enhancement under  
10 2 B 1.1 B 2 B because the number of victims here exceeds 50.

11 All right .

12 I believe that is the end of all of my guideline findings  
13 in this case.

14 So, let me state the guidelines as follows .

15 There is an initial offense level in this case of 7. 12  
16 points were added by virtue of the amount of loss found to apply to  
17 this case.

18 An additional four points were added because of the  
19 number of victims based on the ruling I just made.

20 I also found that under 2 B 1.1 -- 2 B 1.1 B 10, that  
21 this case involved either sophisticated means and/or that involved  
22 an attempt to move the -- or relocate the fraudulent scheme from  
23 one jurisdiction to another .

24 So, under 2 B 1.1 B 10, two additional points were added.  
25 Two additional points again were added because it was found that

1 the Defendant used a minor in the commission of the offense under 3  
2 B 1.4.

3 I did find that the Defendant was a manager, supervisor  
4 of the -- this activity under 3 B 1.1, for a three level adjustment  
5 upwards, plus a two level adjustment for obstruction of justice.

6 That left -- that leaves a total offense level in this  
7 case of 32. The criminal history category is three.

8 And that leads to a range of suggested incarceration  
9 under the guidelines of 151 to 188 months.

10 The fine range is 17,500 to 175,000.

11 Supervised release on Count 1 is two to five years. On  
12 Count 4, 5, 6, 8 and 9 is one to three years, and Count 10 is one  
13 year. Restitution is in the amount of --

14 MS. HOUSTON: I have a dollar amount.

15 THE COURT: Yeah, what is that new number.

16 MS. HOUSTON: \$299,298.67.

17 THE COURT: Restitution is in the amount that -- that  
18 reflects the subtraction that we talked about earlier -- in the  
19 amount of \$299,298.67.

20 And there is a special assessment of \$100 due on each  
21 count of conviction for a total of \$700. Without repeating any  
22 previously expressed objection, is that all accurate as to the  
23 guideline computations as I found them?

24 Mr. Foley?

25 MR. FOLEY: With the previous objections preserved, yes.



1 THE COURT: Miss Houston.

2 MS. HOUSTON: Yes.

3 THE COURT: Why don't we take about a ten minute break,  
4 and we will come back out I'll hear whatever arguments or whatever  
5 you want to present by way of -- requesting an either below  
6 guideline sentence or an above guideline sentence.

7 Okay. So, about ten minutes.

8 (Short recess)

9 (Whereupon, the following proceedings were resumed in  
10 open court, reported as follows:)

11 THE CLERK: All rise.

12 THE COURT: All right. You can be seated.

13 MS. HOUSTON: Your Honor, Mr. Foley and I realize that  
14 with respect to Count 10, that's the consecutive on top of the 151,  
15 and we neglected -- I neglected to --

16 THE COURT: Oh, yeah. I'm well aware of that.  
17 That's unrelated to the guideline computation.

18 MS. HOUSTON: Thank you, Your Honor.

19 THE COURT: I'm aware of that.

20 All right. All right.

21 Mr. Foley, as the lawyer for the Defendant, is there  
22 anything that you wish to present to me by way of evidence or  
23 argument before I sentence him?

24 Any other evidence that you wish to present or just  
25 argument on the 3553 A factors?

1 MR. FOLEY: Two things besides just a general argument .  
2 The -- at the defendant's request, I had filed a motion  
3 for a departure based upon substandard confinement .

4 Did you want to hear that?

5 THE COURT: Yeah, whatever you want to present along  
6 those lines .

7 MR. FOLEY: Okay. With regard to that, the Defendant has  
8 been housed in Kankakee, I think most of the time, a non-Federal  
9 facility. And he has been there for quite some time, and in the  
10 Jerome Combs Center. And due to the substandard conditions  
11 contained therein, believes that he should be released -- at least  
12 a downward departure should be considered based upon the facts  
13 contained in the motion.

14 And I don't want to go through and belabor everything .  
15 It's pretty much laid out in the motion, so I would request the  
16 Court to consider that.

17 Second, I don't know if you want the Government to  
18 respond --

19 THE COURT: No, I'm going to hear from you. I'm going to  
20 hear from the Defendant .

21 Let me just ask, Miss Houston, do you have any additional  
22 evidence that you're going to wish to present or just by way of  
23 argument .

24 MS. HOUSTON: The only thing, rather than the Government  
25 proffering, Supervisory Deputy US Marshal Melanie Thompson can

1 address the issue regarding the substandard , because I don't feel  
2 comfortable proffering that, your Honor, without someone actually  
3 testifying to that.

4 THE COURT: Let's hear her testimony , and then I'll go  
5 back to you, Mr. Foley, on this issue.

6 THE COURT: Raise your right hand and take an oath .  
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MELANIE THOMPSON

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called as a witness by the Government, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

6

DIRECT EXAMINATION BY:

7

MS. HOUSTON:

8

Q Can you state your name for the record, your title and the agency for whom you're currently employed?

10

A Melanie Thompson. Supervisory Deputy US Marshal, United States Marshal Service.

11

12

Q And Supervisory Thompson, are you familiar with the Defendant Willie Harris?

13

14

A Yes.

15

Q And are you familiar with the Jerome Combs Detention Facility in Kankakee, Illinois?

16

17

A Yes.

18

Q And prior to your testimony today, were you able to read the motion that the Defendant filed regarding downward departure based on substandard confinement in a non-Federal facility?

19

20

A Yes.

21

Q Based upon that, did you contact the Jerome Combs facility?

22

23

A I did.

24

Q What if any information did you determine regarding any

25

grievances that the Defendant filed with Jerome Combs with respect

1 to the issues he raised in his motion?

2 A There were none as it pertains to the issues he outlined in  
3 his motion.

4 Q And what if any complaints did he file with respect to the  
5 issues he raised in his motion?

6 A None.

7 Q None with Jerome Combs Facility?

8 A No.

9 Q Can you tell us what if any medical needs were taken care of  
10 for the defendant Willie Harris while he was at the Kankakee  
11 facility?

12 A I know there was a request for some dental work that he put in  
13 for, and it was taken care of.

14 Q And what if any information have you determined by your  
15 contact with the Jerome Combs facility on whether or not the  
16 Defendant has requested to participate in any program while being  
17 housed in Kankakee?

18 A He's never requested.

19 MS. HOUSTON: Nothing further.

20 THE COURT: Anything from you, Mr. Foley?

21 MR. FOLEY: Just a couple questions, your Honor.

22 CROSS-EXAMINATION BY:

23 MR. FOLEY:

24 Q Good morning -- or afternoon.

25 The Federal facility around here that would house an

1 inmate would be the MCC, the closest one?

2 A BOP facility? MCC is a BOP facility.

3 Q I'm sorry, I mis -- the closest non-state facility or non-city  
4 facility that the Federal Government would use to house an inmate  
5 would be the MCC?

6 A Correct.

7 Q And is the MCC not used for inmates around here because of it  
8 being overcrowded or what?

9 A No. MCC is overcrowded sometimes. We normally try to get  
10 inmates that are sentenced and designated into MCC.

11 Q Okay. Would there be room for Mr. Harris at the MCC if the  
12 Marshal Service decided to put him there instead of Kankakee?

13 A I don't know. I can't answer that.

14 Q You've read his motion, is that right?

15 A I have.

16 Q And he has made a number of allegations concerning the  
17 substandard condition of Kankakee with regard to, if you were to  
18 compare it to, for example, the MCC. Did you read those?

19 A I did.

20 Q And did you find any of them to be valid or not?

21 A I can't attest to what the conditions are at either one,  
22 meaning the differences. Like some of the things he outlined was  
23 the temperature. I don't know about the temperature and things  
24 like that.

25 Q Do you know anything about, for example, how long an inmate

1 gets to get out into the fresh air at the MCC as opposed to  
2 Kankakee? Are you aware of that?

3 A I don't know .

4 And I don't believe that Mr. Harris has been housed at  
5 MCC either .

6 Q Okay. And so, what you're saying, he wouldn't have personal  
7 knowledge --

8 A No, he would not.

9 Q And what about the meals that he talks about, and things of  
10 that nature?

11 A Meaning the difference in the type of meals?

12 Q Yes?

13 A The meals may be different .

14 Q You're just not aware of the difference?

15 A I just don't know what the difference would be between the  
16 two.

17 Q And it is true though that at -- in Kankakee, that they do not  
18 have contact visits; is that right?

19 A I'm not sure.

20 Q Okay. But at MCC you do have contact visits?

21 A Again I'm not sure.

22 Q So, then when he alleges that contact visitations are allowed  
23 at MCC, you don't have knowledge one way or the other?

24 A No, and neither would he personally.

25 Q Okay. And about the law library, are you familiar with the

1 law library facility at the MCC?

2 A I'm not.

3 MR. FOLEY: No other questions.

4 Ms. HOUSTON: Nothing else.

5 THE COURT: Thank you.

6 All right.

7 Mr. Foley, let's go back to you, and -- anything else  
8 that you wish to present to me before I sentence your client.

9 MR. FOLEY: With regard to this or anything else?

10 THE COURT: Anything.

11 MR. FOLEY: Okay. The only thing I would say with regard  
12 to this, the evidence presented by the Government really is -- it  
13 is a lot of, "I don't know, I'm not sure."

14 I would just basically stand on the motion itself for my  
15 client.

16 Secondly, Mr. Harris has asked me to ask the Court for --  
17 to consider a downward departure -- where is the letter at -- based  
18 upon, the Court has heard evidence, I believe from Mr. Harris, and  
19 I think we've had some arguments pertaining to another motion  
20 related to this that he at one time gave a proffer to the  
21 Government, a Rule 11 proffer. And I believe we filed a motion. I  
22 think the Court's already ruled upon it.

23 The substance of that motion was that the Government  
24 reneged and they offered evidence that was contrary to the proffer.

25 That's not what this motion is. This motion is for a



1 downward departure based upon his attempted cooperation with the  
2 Government back then, the fact that he did give information to the  
3 Government that he believed was truthful, forthright and helpful in  
4 their investigation.

5 I think Inspector Frink has testified contrary to that,  
6 but my client has testified that he has given information at least,  
7 for example, the identity of a co-defendant, name she was using,  
8 things of that nature.

9 So, he is asking the Court to consider a downward  
10 departure based upon that.

11 (Conference between counsel, not within hearing).

12 MR. FOLEY: The other thing I did want to express to the  
13 Court is I'm the third attorney in this case, and Mr. Bosch was the  
14 attorney back then. And Mr. Harris has, I believe, evidence that  
15 Mr. Bosch would say that the Government said such and such. And I  
16 have reached out to Mr. Bosch and spoke to him, and he told me that  
17 he doesn't recall anything about the case just for the record.

18 Did you want to hear other things or --

19 THE COURT: Yeah, this is your opportunity to present  
20 whatever you want to present to me.

21 (Conference between counsel and client, not within  
22 hearing).

23 MR. FOLEY: Mr. Harris would like to testify concerning  
24 the substandard confinement.

25 THE COURT: Well, I'll give him an opportunity to do that

1 if you'd like to or he can simply do it as part of his allocution  
2 which, of course, I am going to allow him to speak to.

3 So, however you want wish to do that.

4 MR. FOLEY: Okay

5 (Conference between counsel and client, not within  
6 hearing)

7 MR. FOLEY: I think as his right of allocution, I think  
8 that would be appropriate.

9 THE COURT: He's free to talk about whatever he wants  
10 that he thinks is important to my decision making. I don't want to  
11 cut you off. If you want to present the evidence in that form,  
12 that's fine, but I'm going to hear it just the same.

13 MR. FOLEY: Just so he doesn't forget, I'll ask him a  
14 couple questions, if you don't mind.

15 THE COURT: Sir, if you would, raise your right hand to  
16 take an oath.

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WILLIE HARRIS

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called as a witness by the Defendant, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

6

DIRECT EXAMINATION BY :

7

MR. FOLEY.

8

Q For the record, state your name.

9

A Willie Harris.

10

Q Mr. Harris, obviously, you're the Defendant in this case, is that correct?

12

A Yes.

13

Q And you've heard the testimony and representations from myself, the Government, and the witness concerning your motion related to substandard treatment and your request for a downward departure based upon that for your substandard confinement in Kankakee, is that right?

18

A Yes.

19

Q Okay. Can you tell the Court the allegations contained in that motion that I filed on your behalf, in essence, those are things that you've told to me, is that right?

22

A Yes.

23

Q All right. And what do you base those things on?

24

A I was first indicted in Atlanta, Georgia, I was sent through transit throughout numerous states before making it to actually be

25

1     arraigned in Indiana. And I spent a short period of time in  
2     facilities like Oklahoma City and the MCC building prior to being  
3     sent over here, so I am familiar with the differences between the  
4     MCC building and Lake County and Kankakee County.

5     Q     Okay. What are those differences?

6     A     Okay. Well, basically what I notice is my main complaint  
7     regarding my housing in Lake County and Kankakee County is that  
8     they mix us with state inmates. I'm not exactly sure if the  
9     Marshal Supervisor looked into my disciplinary conduct, but it was  
10    two instances where I was attacked by state inmates in Lake County  
11    and Kankakee County, and I was found to not be aggressive or at  
12    fault, but I don't -- I don't know what the -- I'm not exactly sure  
13    if I wasn't able to verify what the policy is against the way  
14    Federal inmates is housed, but I think common sense kind of tell me  
15    that, you know, during my stay to fight these Court proceedings  
16    that I shouldn't be housed, you know, to be in this -- for any  
17    opportunity for me to be, you know, around state inmates to  
18    conflict some kind of danger against me being the fact, you know,  
19    we fighting two totally cases. And that's my main complaint  
20    regarding that, you know, asking that, you know, I get some kind  
21    of, you know, something, you know, regarding being housed in these  
22    state facilities when they grouping us with state inmates.

23    Q     Anything you want to add to that?

24    A     No.

25                 MR. FOLEY:   Okay. That's it, your Honor.

1 THE COURT: Do you have any questions, Miss Houston?

2 MS. HOUSTON: No.

3 THE COURT: All right. Thank you.

4 Mr. Foley, anything else you wish to say on your client's  
5 behalf before I sentence him?

6 MR. FOLEY: Yes, your Honor. I filed a sentencing  
7 memorandum. I'm sure the Court's read that thoroughly, and I just  
8 want to kind of embellish on that a little bit.

9 THE COURT: Sure.

10 MR. FOLEY: The Court obviously went through the  
11 Sentencing Guidelines and made its calculations. And obviously, we  
12 have made our objections and arguments, and we live with what the  
13 Court had to say. With regard to those, there is a few things that  
14 I wanted to say, and I think I've already said them, but just kind  
15 of put all the thoughts together.

16 Number one, with regard to the monetary loss that's  
17 pretty much already been established. We have made our objections,  
18 but we can't present any evidence to the contrary.

19 The one thing about the monetary loss, however, that I  
20 did want to state is that the co-defendants have all been assessed  
21 a monetary amount. They were all convicted or involved in the same  
22 conspiracy, but none of them have been hit with the entirety of the  
23 -- the loss amount, the total loss amount for the entire conspiracy  
24 except for Mr. Harris.

25 And so, we -- we question that. We rely upon the Court's

1 good judgment. We just want to express to the Court in making that  
2 determination with regard to restitution that it also consider the  
3 fact that other co-defendants were involved in this obviously, and  
4 that they had been assessed a far lower amount than Mr. Harris.

5 His involvement, according to the evidence and what the  
6 jury determined, was apparently more substantial and the Court has  
7 already found that he had a managerial role at least, however a lot  
8 of these losses were incurred as the result of a lot of activity  
9 that was done by some of the co-defendants without any intervention  
10 by Mr. Harris at all.

11 A lot of them looked like they had little pockets of  
12 people that were operating on their own to some extent, so, I would  
13 just ask the Court to consider that in determining monetary loss.

14 The -- with regard to number of victims, it's very  
15 difficult to -- obviously, for the Court -- the Court's made the  
16 determination it's over 50. It is, I think, a difficult task in  
17 determining a sentence to just cut things off at a certain  
18 numerical level and just say okay, if you're above this level,  
19 you're going to get four points. If you're above that level, you  
20 only get two, and if you're above another level, I think 250, or  
21 whatever, you get more additional points.

22 And Congress, I'm sure said, we got to cut it off  
23 someplace. We can't make a grey area. We can't say, well, if it's  
24 35 to 70, well, you might be able to give him three or three and a  
25 half or whatever.

1           They just cut it off right at 50. And I would ask the  
2 Court to consider the things that I've already said before in the  
3 sentencing memorandum, that this isn't a clear cut case of the  
4 exact number of victims, in that many of them had no actual loss.

5           The actual loss was really from the bank. I understand  
6 that people had to go through the horrendous task of having to get  
7 rid of cards, change cards, get new cards, having their credit  
8 affected. No question whatsoever.

9           That is a -- that is a definite loss, and an effect to an  
10 individual, but it wasn't a pecuniary loss. A pecuniary loss was  
11 suffered by the banks. With the banks included and the stores,  
12 Gucci, there is a little bit of double counting as well. Even if  
13 you gave him the benefit of everything, you still say it's over 50  
14 victims, but just over 50 victims.

15           I would ask the Court to consider that in determining the  
16 sentence that it fashion a sentence which is appropriate. And I  
17 don't know if I can ask for anything specific, but I would ask at  
18 least for a one level if not two level -- two level reduction down  
19 to the next lower level just because of the number of victims being  
20 so close to 50.

21           The other reason that I'm saying that is because not all  
22 of the victims were specifically targeted or touched by Mr.  
23 Harris's activity. Even Inspector Frink, I believe, testified that  
24 some of these, you know, Mr. Harris's name didn't come up at all.  
25 It's other defendants, and they are all involved in the same

1 conspiracy and certainly they ought to be hit with all of the  
2 number of victims.

3           However, once again, in fairness to Mr. Harris, I believe  
4 the other defendants that were sentenced herein, were not hit with  
5 the entire number of victims. In fact, Amended C was not even  
6 prepared until Mr. Harris got sentenced.

7           So -- and I don't -- I didn't study each of the sentences  
8 that were meted out, but I'm pretty sure that nobody was hit with  
9 over 50 victims.

10           In any event, that's my argument with regard to that.

11           The other thing that I put in my memorandum and would ask  
12 the Court to consider also is that none of the co-defendants have  
13 received any period of incarceration except for Sanders. I think  
14 Sanders got time served. I don't recall exactly what the period of  
15 time was, but I think he may have been in jail for a couple of  
16 years, three years. I'm not sure. Except for him, the  
17 co-defendant that went to trial with Mr. Harris, nobody else has  
18 received any period of incarceration.

19           And I understand they cooperated, but they had a large  
20 involvement, many of them, in doing the same types of activities  
21 that Mr. Harris was involved in. And we think that that should  
22 mitigate against the harshness of the imposition of the sentence  
23 with regard to Mr. Harris.

24           The other thing that I wanted to point out to the Court,  
25 and I have already done this before as well, that is that the



1 guideline requirement that a couple of levels be added for using  
2 minors in support of its criminal activity, I think it's 3 B 1.4 of  
3 the guidelines. And I discussed this with the Court before, and I  
4 think the Court mentioned -- mentioned it the last time we were  
5 here, that it just doesn't seem fair in this circumstance to apply  
6 those two levels.

7 Now, I know that the Court has to follow the guidelines  
8 and impose those two levels.

9 No question about it.

10 However, I think the Court also does have discretion in  
11 imposing sentence in saying, you know, I'm not so sure if this  
12 would be appropriate in this circumstance to increase the offense  
13 level by two given the facts and circumstances in this case.

14 And once again, I have gone over it before and I don't  
15 want to belabor it, but in essence the two minors we are talking  
16 about, Darriell Watkins and Lauren Price, they were both very close  
17 in age to the Defendant.

18 In fact, I believe Lauren Price went to school with the  
19 Defendant, and that he may be three or four months older than her.  
20 Some of the activity that was -- that occurred with Lauren Price  
21 occurred when they were both minors. And then she just happened --  
22 or he happened to turn 18 before she did. And you know, here you  
23 go.

24 You got two levels. So, and the same thing with Darriel  
25 Watkins. He was 18. She was 17, I believe, at the time of the

1 case that involved her.

2 And additionally she never got charged. She got charged  
3 with nothing at all.

4 So, I would just ask the Court to consider those facts in  
5 determining the appropriate sentence.

6 She also, even though she never got charged, Darriell  
7 Watkins, she also came into this court, didn't cooperate either.

8 So, she is a little different than everybody else in,  
9 number one, she was a minor, but she also never got indicted like  
10 Tereza Harris and some others. And she did not come into this  
11 Court and cooperate. She was uncooperative, in fact. She got on  
12 the witness stand and said, you know, nothing.

13 So, the offense is of a nature that nobody likes, that is  
14 identity theft, credit card fraud, but it is -- if anything, at  
15 least a nonviolent offense.

16 Mr. Harris has never to my knowledge done anything of a  
17 violent nature. And he started out with this activity when he was  
18 a minor.

19 So, I would ask the Court to consider all of those  
20 factors as well as previous facts and arguments made in giving him  
21 a sentence which would be a below guideline sentence.

22 THE COURT: Thank you, Mr. Foley.

23 Mr. Harris, do you wish to make a statement in your own  
24 behalf or present any other information to me in mitigation of  
25 punishment?

1 Anything you'd like to say ,

2 THE DEFENDANT: Yes, Judge.

3 THE COURT: I'm going to ask you to speak slowly, okay, so  
4 that my court reporter can get it down.

5 (Conference between counsel , not within hearing.)

6 THE DEFENDANT: Judge Simon, I know it all comes down to  
7 or is going to come down to, you know, the Court consider, you  
8 know, consider my characteristics, the severity of the case and,  
9 you know, if it showed I'm more likely to, you know, get involved  
10 in more criminal activity in the future.

11 I know this is my second time being before the Court for  
12 some of the crimes of this -- I mean, similar crime as this. Okay,  
13 and I like to, you know, try to point out maybe the similarities --  
14 I mean, the difference between the way I was persecuted in my state  
15 case and this case, and the way that, you know, how my  
16 incarceration has been like a big incidental for me, you know, to  
17 actually show that, you know, shall I be release, five years from  
18 now, today, you know, this is not knowing -- a road I would try to  
19 go down again.

20 The main thing I want to point out to the court, I agree  
21 to the Government to give a proffer after discovery of some of the  
22 evidence within the Government's discovery.

23 I actually came to them. Prior, during the  
24 (unintelligible) investigation, I was never approach to try to get  
25 my side of, you know, this criminal activity.

1           This type of activity is actually presented to me as a  
2 very youth.

3           Now, I was raised in a, you know, in a single parent  
4 home.

5           I was really never financially stable.

6           You know, as far as my first case, I kind of, you know,  
7 honestly kind of feel like, you know, the way it was presented to  
8 me, you know, my first case was somewhat inevitable, maybe as far  
9 as me facing, you know, the criminal activity I was involved in.

10          But I would like the Court to know, you know, the  
11 difference between the conviction in that case, and I am grateful I  
12 wasn't given jail time because I was able to pursue -- complete my  
13 high school diploma.

14          And the difference between that case and this case is,  
15 you know, this is the first time I ever spent in jail for a long  
16 length -- period of time. This not my cup of tea, you know.

17          I'm housed around people, you know, you know, that's, you  
18 know, that's -- I never ever want to be housed around again.

19          I try to identify logic in my actions. I can't find  
20 none. Okay. I was able to identify some irony. You know, the  
21 irony of it is, you know, initially as a youth, even with my first  
22 case, I got involved in this type of stuff or agreed to get  
23 involved because of my lack of financial stability as a youth.

24          But it's like, the irony is, you know, should I get  
25 released today or some years from now, I right back at square one.

1 I am adult now. I won't have nothing. You know, so it's really no  
2 logic behind trying to go down this road again, you know, because  
3 it's going to turn out the same way.

4 The Government made some comments in the past. You know,  
5 the Government stated Judge Vasquez order me to get my high school  
6 education. These were some conditions that was imposed on my  
7 sentence, but Judge Vasquez' motive for imposing this was due to  
8 the fact that he thought I was already in school. I was pursuing  
9 my high school education. And even though he ordered that, that  
10 wasn't nothing he had to do for me to try to pursue that.

11 You know, as a child growing up, I didn't grow up saying  
12 I want to be a career criminal and credit card fraud. You know,  
13 this was something that was brought to my attention as a youth.

14 And I'm not going to lie, it's something in so many ways  
15 I became accustom to, you know, because there isn't any way at the  
16 time, you know, I knew how to get money.

17 But, you know, as key people that was involved that the  
18 Government was unaware of, the Government claimed they had no idea  
19 how people information had been obtained, but I try my best to  
20 present that to them.

21 During my proffer I also gave the Government tips on how  
22 fraud could be prevented, you know. I heard stories, you know, of  
23 people in my situation who actually get paid to maybe prevent and  
24 create anti fraud software.

25 So, I think with my prior, you know, actions, you know,

1 it don't show the action of individual that may want to get out and  
2 try to continue. You know, with me trying to pursue school on my  
3 own, there's other stuff that I, you know, wanted to be involved  
4 in, such as, as the Court know, you know, I'm -- I'm a writer, you  
5 know.

6 I want to make money, song writing. I want to make money  
7 -- you know, I been studying how to write screen plays for movies.

8 You know, there's things that, you know, besides this  
9 that I was trying to get involved in other than criminal activity.

10 I advise, you know, that the Government -- of individuals  
11 in this case was being untruthful. And I try my best to show my  
12 role -- my true role in this crime.

13 You know, I think the Government in they expenses they  
14 waited for the last minute to try to even get my side of the story  
15 to the point that, you know, what I had to tell couldn't even be  
16 verified.

17 I don't think, you know, I should be penalized just  
18 because, you know -- I mean, severely penalized, when, you know, my  
19 co-defendant I feel is in the same boat as I am, you know.

20 And just because, you know, in so many ways I kind of  
21 feel I was singled out, but I try my best, you know, lead the  
22 Government in a proper direction basically so they can know I am  
23 remorseful even though I did move for a trial and went to court, I  
24 want to make it clear, I never thought I was going to get acquitted  
25 of all charges.

1           As I explain in the previous hearing, there certain  
2 activity that was grouped within this conspiracy that I know  
3 wasn't, you know, all connected.

4           You know, I feel that individuals who was given, you  
5 know, passes such as Tereza Harris, you know, I strongly -- I  
6 (unintelligible) that was involved in the conspiracy. I didn't  
7 know -- I feel like I was being intimidated into, you know,  
8 pleading for her actions when she is older than me, you know.

9           And I don't understand why I should be penalized and be  
10 ordered to pay, you know, for her actions, you know, when she is  
11 never going to be face persecution.

12           She didn't assist the Government with persecuting this  
13 case, and, you know, it's just like minor issues, that I feel  
14 should have been remove before I enter a guilty plea.

15           And as I stated to the Court, I didn't know all my  
16 options as far as pleading guilty, but I want the Court to know  
17 when I went to trial, I never though I was going to getting  
18 acquitted.

19           I want to plea guilty. During my proffer I admit, I  
20 broke the law. When I got on the stand during my trial, I broke  
21 the law. There is no way I could have got acquitte d when I never  
22 thought I was going to get acquitted.

23           But, you know, I just kind of feel like, you know, it  
24 wouldn't have been in my best interest to take the plea that they  
25 offer me. And I thought that was my only option, take that plea or

1 move forward to trial , you know .

2 So, I did move for a trial against my bad judgment . But  
3 as I stated, you know, it's in my best interest , you know , when I  
4 am release to try to, you know, focus on -- do whatever restitution  
5 you want to give me, to focus on paying that .

6 This is my first time ever sitting in jail for a lengthy  
7 period of time .

8 I understand , you know , the Court may have been fed up  
9 based on, you know, certain motions I put in against my attorney --  
10 previous attorneys , but I was -- in end, what I am saying is this .

11 Judge, when you gave me my bond, I was grateful for it .  
12 Okay. I don't agree with, you know, how the Government move for  
13 the (unintelligible) , you know . Of course you know that, but it's  
14 like when Judge Rodovich deny me bond, you have me a second chance,  
15 I was trying everything in my power to show that I will be in  
16 compliance, you know, like when I get out this situation, I'm going  
17 to be in full compliance .

18 I don't agree, you know, eventhough you did order  
19 conditions for me to have not -- not have contact, I don't agree  
20 that, you know, that a co-defendant should have been allowed to  
21 initiate contact and harass me .

22 And I was -- I wasn't able to tell her leave me alone .  
23 And that, you know, resulted in a violation of my condition .

24 I don't agree with that, but I got to respect your  
25 decision .



1 But I want you to take that into consideration that, you  
2 know, that kind of really mess my head up. You know, once I sat in  
3 Lake County for the first year and, you know, get a chance, you  
4 know, to get my freedom back, when I got sent back to jail, you  
5 know, it really mess me up.

6 You know, just like when I get a (unintelligible) I'm not  
7 going to nothing to ever, you know, you know, break the law.

8 This is clearly -- this is my M-0. I'm not the type of  
9 person -- well, was my M-0. I'm not the type of person that  
10 burglarize no one, rob no one, but as of right now I don't know  
11 anyone who can provide me with any personal identifying  
12 information.

13 And whenever I'm release, I'm not going to try to locate  
14 it. Like I say, there's no logic in it. But, you know, I been in  
15 jail for three and a half years.

16 I strongly feel anything over five years is too much.  
17 That's not my decision. You know, I mean.

18 It's going to be up to you at the end, but whenever I  
19 release, I'm going to try my very best to pay every dime back, and  
20 I want to say one last thing regarding victims.

21 When this was first presented to me, you know, I didn't  
22 fully understand, you know, the way this type of crime affect the  
23 victims, like the psychological toll it has on the victims.

24 And, you know, I'm a person that live with hospitality.  
25 I don't want no one to do nothing to me that -- I mean, do nothing

1 to no one that I don't want them to do to me.

2 Okay, I say here and the difference between my first case  
3 and this case, my first case, there was no victim impact statement.

4 There wasn't any restitution order.

5 So, for me to be -- put a face with the actual victims  
6 because, you know, this is a faceless crime, and, you know, the way  
7 it's been committed by me and my co-defendants, I was able to get a  
8 firsthand, you know, opportunity to see how this type of crime  
9 affect the victims, you know, and, you know, and I try to put  
10 myself in they position, like, you know, if I'm go to store and,  
11 you know, I swipe my card and say to the client, you know, I have  
12 plenty of money. And my credit card company tell me, you know,  
13 this amount of money been taken off your account.

14 And I know my card been in my wallet the whole time, even  
15 though it's not going to be a loss to me, I'm always going to be  
16 paranoid, you know, to know like they be thinking it will happen  
17 again.

18 So, I fully understand, you know, the way it affect the  
19 victims. That's another reason, you know, I never try to roll down  
20 this road again. And being the fact this my first time ever  
21 spending a long period of time in jail, this is not my cup of tea.  
22 This is not for me.

23 You know, I am pursuing -- I was pursuing t hings, you,  
24 know, such as, you know, I's still in school. I was trying to  
25 pursue my career as song writer, was other things besides this I

1 was involved in.

2 I'm sorry. There was other things I was involved in that  
3 the government wasn't making you aware of, but I want you to know  
4 that, you know, you know, I can lead a straight life. I can work  
5 for honest, you know. This case right here has set me back three  
6 steps, and, you know, it's -- I'm going to try my best to get on my  
7 feet, you know, and not put myself in a predicament like this  
8 again.

9 Thank you.

10 THE COURT: All right. Thank you, Mr. Harris.

11 Miss Houston, does the Government have any comments or  
12 recommendations as to the sentence I should impose?

13 MS. HOUSTON: Yes, your Honor.

14 With respect to the argument on the downward departure,  
15 based upon the substandard conditions, I think Supervisory Deputy  
16 US Marshal Melanie Thompson summarized it by saying that after  
17 having read the motion filed by the Defendant that he never made  
18 any -- never filed any grievances or complaints at the Jerome Combs  
19 facility, that he did receive his medical needs, and he never  
20 requested an opportunity to participate in any programs while  
21 housed there.

22 In addition, since he's a pretrial detainee, the 14th  
23 Amendment is the applicable standard. And the test for determining  
24 the constitutionality of treatment or conditions of pre-trial  
25 detainees alleging violation of their due process is whether those

1 conditions amount to punishment of the detainee .

2 In this case it does not .

3 The complaints asserted by the Defendant do not even  
4 reach these levels .

5 Here he hasn't been denied any of his basic human  
6 necessities , and he just didn't receive the level of comfort that  
7 he demanded. And the Constitution doesn't require a correctional  
8 facility to provide comfortable jails, even for pretrial detainees .

9 You can look at the conditions imposed deminimus , and  
10 clearly between the fact that he received the medical conditions ,  
11 that he was fed, he was housed, and the fact that he did not like  
12 the blankets or he did not like the temperature, this doesn't reach  
13 the level of a violation of his due process under the 14th  
14 Amendment .

15 It didn't amount to punishment .

16 And Bell V Wolfish , 441 US 520, 535 . It's a 1979 case.

17 And also the determination of whether these restrictions  
18 and practices constitute punishment in the constitutional sense  
19 depends on whether they are rationally related to a legitimate  
20 non-punitive governmental purpose and whether they appear excessive  
21 in relation to that purpose .

22 Also, the Wolfish case, there is no showing of an  
23 expressed intent to punish the Defendant at the Jerome Combs  
24 facility. And there is no indication there is an alternative  
25 purpose intended to punish him.

1 Kennedy versus Mendoza Martinez, 372 US 144 at 168-169.

2 So, we request that his motion for downward departure  
3 based upon the substandard conditions be denied.

4 He also talks about his attempted cooperation and the  
5 fact that he provided a name. As Inspector Frink testified, he did  
6 not find the defendant's statements at the proffer to be of value.

7  
8 In fact, he felt that he lied. The only thing he did  
9 provide is the name Chanel Montgomery, and it should be noted  
10 Alnese Frazier, who's a co-conspirator in this case, acknowledged  
11 that that was one of her identities, and that she had obtained a  
12 State of Georgia ID, and that exhibit was admitted at trial.

13 Mr. Foley argues that in terms of the victims, that there  
14 is some type of a double count.

15 However, he misrepresents, because in terms of victims,  
16 you look at -- for the personal and the individuals you look at  
17 whether or not their personal identifying information was  
18 compromised. Then you look at whether or not there was a loss.

19 There is no double counting because those victims are  
20 only counted once because their personal identifying information  
21 was compromised. And whether they -- it was actually compromised  
22 or they suffered a loss, they are only counted once.

23 With respect to the businesses or the merchants, again,  
24 they suffered a loss, and they can only be counted as a victim if  
25 they suffered a loss.

1           He talks about -- references how the other --  
2 co-conspirator defendants were treated. And it's clear that the  
3 Defendant was the conduit for the disbursement of the credit cards  
4 in this case.

5           None of these individuals went out who cooperated or  
6 participated in this conspiracy obtained these credit cards on  
7 their own.

8           They were -- they either gave the Defendant their  
9 personal information or utilized a fictitious name wherein he took  
10 them to get fake IDs or convinced them to use IDs of other  
11 individuals.

12           So he was the conduit for the disbursement of the credit  
13 cards which is why he, as the Court has determined, had some  
14 leadership role in this. Again, he acted while he was on state  
15 supervision for similar conduct.

16           Inspector Frink was the investigator on that case. And  
17 even though Judge Vasquez sentenced the Defendant, he continued in  
18 the same criminal vein.

19           The difference is he moved his criminal conduct  
20 throughout different jurisdictions in the country.

21           He talks about the fact that there are other things that  
22 he was getting involved in, but here he supported his lifestyle on  
23 the backs of these victims by using their credit cards.

24           He admitted that had he broke law, yes, but he only  
25 admitted that he did it in Georgia.

1           And it's the Government's position that he admitted that  
2 in hopes that since that's outside our jurisdiction we couldn't  
3 pursue him on it, but it was clear that the jury determined that  
4 the defendant's criminal conduct initiated here and that he acted  
5 both in Wisconsin and in Georgia.

6           He talks about the fact that there was no restitution  
7 order in the state case, but when he testified he admitted that he  
8 had over 60,000 -- at least \$50,000 in cash without having any  
9 legitimate work history. Clearly that money, it can be argued,  
10 came from the fraud that he committed in the state case.

11           He testified -- he tells the Court he wouldn't want this  
12 done to him. Yet, he was sentenced by Judge Vasquez and continued  
13 on with his criminal conduct.

14           The only reason he doesn't want it done to him is because  
15 he's been caught.

16           He said he would lead a straight life. That's what he  
17 told Judge Vasquez when he was sentenced in the state case where  
18 he's continuing -- where he continued his criminal conduct.

19           It's the Government's position that this Defendant is  
20 only remorseful because it is now -- he is now at the point where  
21 he realizes he is actually going to be sentenced, that the delays  
22 have stopped, that we are at a point where this Court is going to  
23 make a determination of how long he will be housed in the Bureau of  
24 Prisons.

25           The Government filed its sentencing memorandum. And we

1 believe that -- that the timeframe for the Defendant between 151  
2 and 180 months, we have argued for an upward departure as they have  
3 argued for downward.

4 We based our argument on Section 5 H 1.7, the role in the  
5 offense, and also on Section 5 H 1.9, the defendant's dependence on  
6 criminal activity for a livelihood.

7 I am going to start with 5 H 1.9. This Defendant has  
8 repeatedly shown a pattern of criminal conduct. His entire life,  
9 as short as it is, has been engaged in a livelihood that's based on  
10 income derived from his criminal conduct. He has never held a job.

11 Lauren Price testified that she got him a job briefly but  
12 he didn't want to do that.

13 He has survived expressly on the funds that he received  
14 from either the victims in the state court or the victims in this  
15 case before the -- before this Court.

16 And based upon that, we believe that this is a 3553 A  
17 factor, which would allow the Court to do an upward departure on  
18 this Defendant.

19 And I won't go into further detail because it's contained  
20 within my motion.

21 We also look at the role in the offense under 5 H 1.7.  
22 Again, this Defendant --

23 THE COURT: Can I just stop you there, on this one.

24 MS. HOUSTON: Yes.

25 THE COURT: Because what it says is that a Defendant's



1 role in the offense is relevant in determining the applicable  
2 guideline range , ie, role in the offense but is not a basis for  
3 departing from that range .

4 MS. HOUSTON: But it does say --

5 THE COURT: I don't understand what you're saying .

6 MS. HOUSTON: Under subsection D of 5-K 2.0, it says you  
7 can look at it. You don't have to, Your Honor, but you can look at  
8 it.

9 We'd also argue that as Inspector Frink testified we have  
10 our 60 plus victims , but there were other victims who this  
11 Defendant was prepared to victimize , the individuals in the  
12 notebook that was obtained by Detective Janiga , Munster , the  
13 notebook that was seized down in Atlanta when the search warrant  
14 was executed .

15 So, it's the Government's position that this Defendant  
16 has -- is not showing remorse , that he is someone who has a  
17 propensity to disregard and show total disrespect for the Court ,  
18 and we'd ask that the Defendant , if not an upward departure ,  
19 receive the maximum under the guidelines .

20 THE COURT: All right . The Supreme Court has modified  
21 the Federal Sentencing Act and made the Sentencing Guidelines  
22 advisory .

23 It used to be that the Sentencing Guidelines were  
24 mandatory . Judges like myself had to follow the guidelines , but  
25 Booker and the cases following Booker demoted the guidelines , and

1     made them advisory instead.

2             And so, what that means is that I have to certainly take  
3     into account what the Sentencing Guidelines advise, but I'm not  
4     required to follow them.

5             The guidelines are now one factor, along with a whole  
6     host of other factors, that I have to take into consideration when  
7     I sentence a Defendant.

8             But I cannot arrive at a sentence with a thumb on the  
9     scale in favor of the guidelines. In other words, the guidelines  
10    are neither more important nor less important than all of the other  
11    factors that I have to take into consideration.

12            So, in addition to the Sentencing Guidelines, I have to  
13    take into account the nature and circumstances of the offense, the  
14    history and characteristics of the Defendant. I have to be  
15    concerned about fashioning a sentence that promotes respect for the  
16    law, that reflects the seriousness of the offense, that provides  
17    just punishment for the offense. I have to be concerned with  
18    detering criminal activity, both specific deterrence, that is  
19    detering Mr. Harris himself from committing additional crimes, but  
20    also the concept of general deterrence, whereby sentences have to  
21    send a message to the community that certain types of behaviour is  
22    not going to be put up with, and hopefully that message will deter  
23    others from committing offenses.

24            I have to be concerned with have avoiding unwarranted  
25    sentencing disparity among similarly situated defendants. And

1 ultimately, the goal is to arrive at a sentence that is sufficient,  
2 but not greater than necessary to achieve the statutory goals of  
3 sentencing.

4 I have a Defendant before me today who is -- I believe  
5 he's 25 years old now.

6 He has had, I believe, one prior employment with a movies  
7 -- a movie house, but other than that, really no history of  
8 employment.

9 He does have one prior conviction for a similar offense.  
10 I will note that he was -- he was born and raised in Gary. He's  
11 raised, you know, in a very poor environment, single parent family.  
12 The Defendant has had essentially no contact with his father, who I  
13 believe has been in prison since the early 1990s, based on a murder  
14 conviction.

15 There is some indication that the Defendant has a history  
16 of anger control problems when he was young. And he was diagnosed  
17 in elementary school with having an emotional handicap. He did have  
18 -- admit to a prior arrest for excessive alcohol use when he was  
19 younger. There is no reported -- he also admitted that he lost  
20 considerable sums of money gambling.

21 He really has no vocational skills. He's only had one,  
22 as I mentioned, legitimate job in his life. That employment lasted  
23 only a few weeks.

24 So, that's essentially the biography of Mr. Harris, other  
25 than the criminal activity that he's engaged in.

1 Criminal activity in this case is extremely serious. The  
2 -- there are dozens upon dozens upon dozens of people who have had  
3 their identities essentially stolen from them.

4 And I think as Mr. Harris sort of aptly points out, at  
5 the time somebody's committing such an offense, in the defendant's  
6 -- from the defendant's point of view, this is just some faceless,  
7 nameless person out -- somewhere out in the world who may be  
8 inconvenienced by what's taking place, and that it's just some  
9 credit card company that's picking up the bill.

10 But what this trial demonstrated to me, and I think was  
11 shown that the Government paraded through here a number of people  
12 who have had their identities compromised by this Defendant. And  
13 they present really sort of the effect that that has had on their  
14 lives.

15 It's a nightmare. It's a nightmare for these people when  
16 somebody assumes somebody else's identity. It's as if their very  
17 being is being taken from them.

18 And it's exacerbated in this case when, frankly, I listen  
19 to those undercover -- undercover, but the recordings that were  
20 made of the Defendant calling the various credit card companies and  
21 trying to persuade them to add some phony person onto these  
22 victims' accounts.

23 And that was just jarring to me. Candidly.

24 It was arrogant. It was disrespectful, the way in which  
25 Mr. Harris treated those attendants. He is screaming at them.

1 He's cursing them out up one side, down the other. It's a level of  
2 boldness, which I found really jarring, and I found that evidence  
3 to be extremely compelling.

4 So, we have computed the guidelines, and of course, the  
5 guidelines, because it's a very serious offense, treat it very  
6 seriously.

7 So, the defendant's been given a four level adjustment  
8 because of the number of victims in this case, and rightfully so.  
9 I respectfully disagree with Mr. Foley. I don't think this is a  
10 case where it's kind of a close call and, gee he's just over 50, so  
11 let's cut him a break.

12 That may apply to some of these other applications that  
13 I'm going to talk about in a minute, but not on the number of  
14 victims. This is well in excess of 50. And each of those people  
15 were victimized because they had their account in some way  
16 compromised by this Defendant, or by his cohorts, and of course,  
17 under the concept of relevant conduct he is accountable for that.

18 So, he is given a two level increase because it involved  
19 sophisticated means, and that this operation was moved from Indiana  
20 to Georgia. There is also evidence that it was carried out in  
21 Wisconsin, and I believe Illinois, he also was given a substantial  
22 increase because he was a -- there is no question that the evidence  
23 at least in my mind is that he was a manager or supervisor of  
24 criminal activity.

25 And it's also abundantly clear that throughout the

1 process, Mr. Harris perjured himself.

2 And that I previously discussed that at the earlier  
3 sentencing here. So, for all of those various reasons, the  
4 guidelines start piling up in a case like this. As a result the  
5 guidelines in this case suggest a sentence of 151 to 188 months not  
6 including Count 10.

7 Now, the Defendant has -- well, first let me talk, the  
8 Government has requested an above guideline sentence in this case.  
9 And I'm not persuaded by that candidly in the lease.

10 The provisions of the guidelines that the Government has  
11 pointed me to, I don't think provide justification for an upward  
12 movement or deviation from the guidelines in this case.

13 Indeed, I think the guidelines themselves take into  
14 account all of the conduct, and that's why they are so onerous, and  
15 again, I think rightfully so.

16 But, you know, Miss Houston has pointed me to 5 H 1.9  
17 that deals with somebody, you know, has a criminal livelihood. You  
18 know, that may well -- I'm not saying it's completely unfounded  
19 here, but under the facts of this case where the Defendant started  
20 this when he was 17 years old, and under the circumstances under  
21 which he was raised, and the level of his education, it's not at  
22 all surprise that this is how he is supporting himself.

23 This is not a justification. But it's certainly in my  
24 mind not a reason to depart above the guidelines or deviate above  
25 the guidelines.

1           The other one dealing with the role in the offense , I  
2 just -- I just don't think that applies. He's already being given  
3 a three level enhancement for his role in this offense.

4           So, I am -- I am really unpersuaded by the Government's  
5 request for an above guideline sentence in this case.

6           They have also pointed me to the fact that he has a prior  
7 criminal record for doing the same thing , and then thumbed his nose  
8 at the system and went right about continuing with his criminal  
9 conduct under very similar circumstances .

10           But again that's behavior that the guidelines take into  
11 account , and it's why he is now in a criminal history category 3,  
12 because he committed the offense while he was on -- on probation  
13 for the prior.

14           And of course, he's given criminal history points by the  
15 existence of that prior.

16           So, the fact that he is now a recidivist is really taken  
17 into account by the guidelines . I don't think this is one of those  
18 cases where the defendant's criminal history is underrepresented  
19 such that it would justify an above guideline sentence .

20           So, I'm unpersuaded by a request for an above guideline  
21 sentence here.

22           Now by the same token, the Defendant has made a number of  
23 arguments as to why he should receive a below guideline sentence ,  
24 and in the main, I disagree with those as well .

25           The first here is he's pointing me to this alleged

1     substandard pretrial confinement over in Kankakee .

2             He contends that the conditions at Kankakee are  
3     substantially worse than other Federal facilities like the MCC.  
4     The problem at the beginning is there is really no evidence that's  
5     been presented to me on the issue other than the defendant's own  
6     testimony here. And all that he testified about was the fact that  
7     his complaint was that he was being housed with state inmates .

8             And perhaps they present some different level of threat  
9     to other inmates , and that it's not good -- it's not good  
10    correctional practice to house state inmates with Federal inmates ,  
11    but that to me doesn't -- that's a matter that's up to the Bureau  
12    of Prisons and the Marshal Service , but I really didn't hear any  
13    evidence that Kankakee facility is, in fact, substandard . But even  
14    if it is in different ways , people -- inmates who are held at  
15    Kankakee are treated differently than the MCC, I don't believe that  
16    under the facts of this case, it would justify a below guideline  
17    sentence .

18            I'm not even sure what 3553-A factor it is germane to. I  
19    suppose it would go to the issue of what is a just punishment , but  
20    again I'm not convinced that under the facts of this case the  
21    Kankakee conditions are so poor as to justify a below guideline  
22    sentence , and indeed, the testimony of the deputy marshal here  
23    today confirmed that, you know , Mr. Harris never filed any  
24    complaints , received appropriate medical treatment in that  
25    facility , didn't file any grievances .



1           And so, based on the record that I have before me, I  
2   don't believe that that's a basis to deviate below the suggested  
3   guideline range .

4           You know , I have thought about the issue and considered  
5   it, but under the circumstances of this case, given all of the  
6   other aggravated circumstances that I have talked about, the fact  
7   that the Defendant obstructed justice, this was a far flung  
8   sophisticated operation, the fact that the Defendant, until today,  
9   demonstrated little remorse, and indeed at every step in the  
10   processes he's really attempted to deflect blame onto others, never  
11   fully accepting responsibility until his comments here today at the  
12   time of his allocution, but up to that point, it's been a, in his  
13   right, a full court press sort of denial of any responsibility .

14           So, under all of those circumstances , I don't believe a  
15   below guideline sentence is appropriate given the conditions in the  
16   Kankakee county jail .

17           The Defendant also asked me to take into consideration  
18   the fact that he says that he -- you know , that he cooperated by  
19   sitting down at a Rule 11 proffer , but I credit the testimony of  
20   Inspector Frink. He's testified a number of times in this case. I  
21   found him to be completely credible , reliable , experienced ,  
22   careful .

23           He wouldn't admit to things unless he knew it. And he  
24   testified that frankly, Mr. Harris wasn't very cooperative at all  
25   and the information he provided wasn't helpful , and they believe

1 may have been misleading in some respects. I credit that, and I  
2 don't believe his sitting down for a proffer session that really  
3 doesn't lead anywhere Chanel good enough basis to deviate below the  
4 guidelines.

5 You know, the Defendant has also in his sentencing  
6 memorandum pointed out the fact that, you know, that he -- as I  
7 mentioned earlier, he grew up in a household without a father  
8 figure.

9 As I mentioned his dad was in prison having been  
10 convicted of murder. You know, I'm completely sympathetic to the  
11 defendant's situation, but under these circumstances I don't  
12 believe it's a basis to deviate below the sentencing guideline  
13 range because of the reasons I've previously stated given the  
14 aggravated nature of this offense.

15 You know, there are many people who grow up under very  
16 difficult circumstances and find their way in life. And I don't  
17 believe that at least under the circumstances of this case, that  
18 that's a justifiable reason for doing a below guideline sentence.

19 Now, the principal issue that I think is the one that  
20 takes most time to address is the Defendant has pointed out the  
21 fact that many of the co-defendants in this case received much less  
22 harsh sentences than what the Defendant is facing.

23 They received either home detention or probation or in  
24 the case of Mr. Sanders, a more limited prison term. And this is  
25 an issue that would be relevant to the 3553 A factor of whether --

1 the fact that I need to impose a sentence that avoids unwarranted  
2 sentencing disparity among similarly situated defendants . But  
3 that's the key. The key is whether or not those others were in  
4 fact similarly situated to the Defendant . Now, they did  
5 participate in the same conspiracy , and they committed similar  
6 crimes, but that's about where the similarity ends.

7 Setting aside Mr. Sanders, they all pled guilty. They  
8 all admitted their wrongdoing . They all did not put the Government  
9 to the task of a protracted trial .

10 They also all cooperated , and received substantial and  
11 justifiable consideration for that cooperation . Many of them  
12 testified in this trial against Mr. Harris .

13 That type of behavior is often, and ought to be , greatly  
14 rewarded , and it was in this case because it's a difficult thing to  
15 do to come into a courtroom and to finger somebody . And that's  
16 what they did.

17 And so, in addition to that, all of the other defendants  
18 in this case were really smaller players in this offense. If you  
19 want to describe this conspiracy as -- I think it's best described  
20 as a hub and a spoke; in which case Mr. Harris is clearly at the  
21 hub of this conspiracy , directing others, doing the legwork, and  
22 sort of directing the co-conspirators to do what he tells them to  
23 do.

24 I mean he was the -- he was the mastermind behind this  
25 entire endeavor , at least according to the evidence presented in

1 this courtroom.

2 All of the women who were co-defendants in this case  
3 pretty much did what they were told, and I believe that.

4 And all of them essentially testified that they did what  
5 Mr. Harris told them to do.

6 And I believe that. And the evidence also suggested  
7 that, whether it was from the audio recordings of Mr. Harris  
8 dealing with the credit card companies or the photograph of Mr.  
9 Harris hovering over the one co-conspirator as she was engaging in  
10 a transaction, all of it suggested to me that Mr. Harris by far and  
11 away was the driving force behind this conspiracy.

12 And so, I cannot say that there is a concern here with  
13 disparity in sentencing when this Defendant is no way similarly  
14 situated to the co-defendants in this case for the reasons I have  
15 just stated.

16 There -- the other issue is it is true that they had  
17 smaller relevant conduct, but it was because their knowledge of the  
18 conspiracy was pretty well limited to what they did.

19 So, each of these co-conspirators were not tagged with  
20 the totality of the loss here, but that was because their relevant  
21 conduct was more limited as to what they reasonably could have  
22 foreseen.

23 So, for all those reasons, I just don't see the disparity  
24 in sentencing is a basis here that helps Mr. Harris at all.

25 The one area that does bother me that I do think there

1 ought to be some consideration here for the defendant deals with  
2 this use of a minor. There is no question under the technical  
3 reading of the Sentencing Guidelines, it's applicable in this case.

4 But the practical considerations that I think really are  
5 undermining or that are driving that sentencing factor is that when  
6 somebody uses a minor in a way that attempts to control them, uses  
7 the fact that they are an adult and they are dealing with a kid,  
8 and they coerce the kid or cajole the kid into doing something they  
9 may not otherwise do. I mean, the fact of the matter is the  
10 Defendant in this case was a couple of months older than the quote  
11 unquote "minors" involved here. And so, it's a ridiculous  
12 application of that "use of a minor" enhancement under the  
13 guidelines.

14 I just don't think it makes any sense under the -- under  
15 the circumstances of this case.

16 I understand you have to draw a line somewhere, and they  
17 have drawn the line at age 18, but where one of the defendants is  
18 just on the other side of the line and the other Defendant -- or  
19 the minor is just below the line, I just don't think it makes any  
20 sense to tag somebody with a two level enhancement.

21 So, even though I've properly computed the guideline, and  
22 given the two level enhancement, I do have the authority now to  
23 disagree with the guideline. And under the application in this  
24 case, I do disagree with it for the reasons that I have stated.

25 And so, I have arrived at the following sentence that I

1 intend to give. I'll give counsel one final chance to make any  
2 other objections or comments, but pursuant to Title 18 United  
3 States Code Section 3551 and 3553, as modified by United States  
4 versus Booker, it's the judgment of the Court that the Defendant is  
5 hereby committed to the custody of the Bureau of Prisons for a term  
6 of 132 months on each of Counts 1, 4 and 5, and a term of 120  
7 months on each of Counts 6, 8 and 9 to be served concurrently.

8 In addition to this 132 months, the Defendant is  
9 sentenced to a term of 24 months on Count 10, and that shall be  
10 served consecutively to the terms of imprisonment on the other  
11 counts, for a total term of imprisonment of 156 months.

12 The Defendant will then be placed on three years of  
13 supervised release. This term consists of concurrent terms, three  
14 years of supervised release on Counts 1, 4, 5, 6, 8 and 9, and a  
15 one year term of supervised release on Count 10.

16 Defendant shall not commit another Federal, state or  
17 local crime. While on supervision, he shall comply with the  
18 following mandatory conditions. As I mentioned, he shall not  
19 commit another Federal, state or local crime.

20 The Defendant must report to the probation office in the  
21 district in which he is released within 72 hours of release from  
22 the custody of the Bureau of Prisons.

23 He shall not unlawfully possess a controlled substance  
24 and shall refrain from any unlawful use of a controlled substance.  
25 He shall submit to one drug test within 15 days of release from

1 imprisonment , and two periodic drug tests thereafter as determined  
2 by the Court .

3 The Defendant shall not possess a firearm , ammunition ,  
4 destructive device or any other dangerous weapon .

5 The Defendant shall cooperate in the collection of DNA as  
6 directed by the probation office . The Defendant shall comply with  
7 the 15 standard conditions that have been adopted by this Court .  
8 In addition , he shall comply with the following special conditions .  
9 Defendant shall not incur new credit charges or open additional  
10 lines of credit without the approval of the probation office unless  
11 the Defendant is in compliance with the installment payment  
12 schedule .

13 The Defendant shall provide the probation officer with  
14 access to any requested financial information .

15 The Defendant shall participate in the a general  
16 equivalency degree , GED preparation course , and obtain his GED  
17 within the first year of supervision to the extent he hasn't  
18 already done that .

19 The Defendant shall participate in a substance abuse  
20 treatment program and abide by all the program's requirements and  
21 restrictions which may include testing for the detection of alcohol  
22 or drugs of abuse at the discretion of the probation office .

23 While under supervision , the Defendant shall not consume  
24 alcoholic beverages or any mood altering substance which overrides  
25 the no excessive use of alcohol language that's in standard

1 condition number 7.

2 Defendant shall pay for the cost of any participation in  
3 the program but not to exceed his ability to pay for it. I am  
4 giving this special condition of supervision given what's detailed  
5 in the presentence report, and the defendant's substantial alcohol  
6 use and the concern over that.

7 The Defendant shall also participate in a mental health  
8 treatment program and shall abide by all the program requirements  
9 and restrictions.

10 Defendant shall pay all or part of the cost for  
11 participation in the program not to exceed his ability to pay for  
12 it.

13 It's ordered that the Defendant shall pay restitution to  
14 the United States District Court Clerk.

15 Miss Houston, could you remind me again of that number.

16 MS. HOUSTON: The total number.

17 THE COURT: Yeah 298 --

18 MS. HOUSTON: \$ 299,298.67.

19 THE COURT: And which of the four victims does the amount  
20 get deducted from. Do you know that?

21 MS. HOUSTON: That's the total. We have already deducted  
22 the American Express amount.

23 THE COURT: Okay. But --

24 All right. So --

25 MS. HOUSTON: I can -- the original --



1 THE COURT: The original amount to American Express was  
2 77,791. There has to be an amount deducted off of that.

3 MS. HOUSTON: Correct. I can give you those figures.

4 THE COURT: What is that new number.

5 MS. HOUSTON: The new number for the reduction is  
6 6,907.01.

7 907.01.

8 THE COURT: \$69,907.01 (sic)

9 MS. HOUSTON: \$6,907.01.

10 THE COURT: I don't understand that.

11 MS. HOUSTON: Are you asking what should be deducted from  
12 American Express?

13 THE COURT: I'm asking what the total amount that  
14 American Express should --

15 MS. HOUSTON: I'm sorry, Your Honor,

16 THE COURT: Have you done the math, I guess is what I'm  
17 getting at.

18 MS. HOUSTON: \$70,848.30.

19 THE COURT: Okay. so, the Defendant is ordered to pay  
20 restitution to the United States District Court clerk in this  
21 building. The amount is due immediately. It's to be disbursed to  
22 the following victims.

23 JP Morgan Chase in the amount of \$175,414.46.

24 Discover Financial Services \$41,959.83.

25 Citibank, \$11,040.08.

1 American Express , \$70,884.30 for a total amount of  
2 \$299,298.67.

3 That restitution obligation shall be paid in a joint and  
4 several liability with all of the co-defendants in this case, Amber  
5 Fields, Lauren Price, Alnese Frazier, Diontria Frazier, Robert  
6 Sanders, Shana King and Joinette Davis.

7 If the Defendant is unable to pay restitution in full at  
8 the time of sentencing, which he obviously will not be able to,  
9 then restitution shall be paid at a minimum rate of \$150 per month  
10 commencing 30 days after placement on supervision until the amount  
11 is paid in full.

12 Pursuant to United States versus Boid, the Defendant may  
13 pay any portion of this restitution from any wages he earns in  
14 accordance with the Bureau of Prisons Inmate Financial  
15 Responsibility Program. Although participation in that program is  
16 voluntary, the Defendant should note however that failure to  
17 participate in the program while incarcerated may result in the  
18 denial of certain privileges to which he might otherwise be  
19 entitled while in prison and that the Bureau of prisons has the  
20 discretion to make such a determination.

21 Any portion of the restitution that is not paid in full  
22 at the time of the defendant's release from the imprisonment shall  
23 become a condition of his supervision.

24 The Defendant shall notify the US Attorney's office in  
25 this district within the 30 days of any change of mailing or

1 residence that occurs while any portion of the restitution remains  
2 unpaid. He's ordered to pay a special assessment of \$100 on each  
3 count to which he has been convicted, a total of 700.

4 I am not imposing any fine in this case given the  
5 defendant's poor financial condition as set out in the presentence  
6 report makes it unlikely that he will be able to pay a fine, so I'm  
7 going to waive the fine in this case.

8 I am going to order at this time -- I'll enter a final  
9 order of forfeiture as to the items that the jury found at trial  
10 were directly traceable to the offense of conviction, and I'll be  
11 entering that order today.

12 In addition to that, I am going to be entering an order  
13 denying the pending motions.

14 There was a motion for a judgment of acquittal that the  
15 Defendant filed. There was also a motion for relief because of the  
16 Government's violation of the Rule 11 proffer.

17 There was also a motion for return of items forfeited,  
18 and a motion to produce evidence about the number of victims and  
19 loss amounts.

20 All of those were presentencing motions. I have put them  
21 all together in one order, an opinion which I'll issue today.

22 All right. The sentence that I have just given is  
23 slightly below what the guidelines suggest for the reasons that I  
24 have stated, my disagreement with the application of the use of a  
25 minor. Had that not been given in this case, I -- or not applied

1 in this case, it's otherwise a middle of the guideline sentence,  
2 which I believe to be entirely appropriate for the reasons I've  
3 outlined in detail earlier.

4 All right. Counsel, do either of you know of any reasons  
5 why the sentence should not be imposed as stated? Mr. Foley?

6 MR. FOLEY: None, except my client has mentioned that  
7 with regard to the forfeiture, he was requesting that his two  
8 computers be returned to him. And if not that, that the -- his  
9 personal information be returned to him off of those computers.

10 THE COURT: These are two of the computers that the jury  
11 determined were directly traceable to the offense, is that right?

12 MS. HOUSTON: Your Honor, the computers were -- they were  
13 forfeited.

14 THE COURT: That's part of the --

15 MS. HOUSTON: Correct.

16 THE COURT: The forfeiture order?

17 MS. HOUSTON: Correct, correct.

18 THE COURT: So, that's denied.

19 Anything else then, Mr. Foley?

20 MR. FOLEY: No, your Honor.

21 THE COURT: Miss Houston.

22 MS. HOUSTON: No, your Honor. I just wanted to alert the  
23 Court that the Government did file its motion for money judgment  
24 order forfeiture, and that does not require a jury determination.  
25 That is a Court determination, and it's detailed in the order.

1 THE COURT: I haven't had a chance to review that. And  
2 I'll wait to see if the Defendant -- that is a different issue,  
3 right.

4 MS. HOUSTON: Absolutely.

5 THE COURT: From the sentencing.

6 All right. All right. So, I do now order the sentence  
7 imposed as stated.

8 Mr. Harris, you've heard the judgment of the Court  
9 imposing sentence upon you.

10 Pursuant to Rule 32 J of the Federal Rules of Criminal  
11 Procedure, I advise you that you can appeal your conviction, and  
12 you also have a statutory right to appeal your sentence under  
13 certain circumstances if you think it was contrary to law.

14 With few exceptions any notice of appeal has to be filed  
15 within 14 days of the judgment being entered in your case. And if  
16 you want to file an appeal but you're unable to pay for the costs  
17 of an appeal, you may apply for leave to appeal in forma pauperis,  
18 which means you may be able to pursue an appeal at no cost to you.

19 Mr. Foley, I just remind you of your duties to perfect  
20 that appeal should your client wish you to do so.

21 You will remain responsible for his representation on  
22 appeal unless you're relieved by the Court of Appeals upon motion.

23 Do you want me to make a recommendation as to placement  
24 for Mr. Harris?

25 (Conference between counsel and client, not within

1 hearing) .

2 MR. FOLEY: Yes, your Honor. My client would request  
3 that the Court recommend that he be placed in an institution near  
4 the Chicagoland area so his family could visit with him. And also,  
5 if Court could recommend that he be eligible for or looked into his  
6 eligibility concerning a drug treatment program.

7 THE COURT: I will include both those in the judgment and  
8 commitment order that the Defendant be placed -- I think it's well  
9 justified -- in the residential drug and alcohol treatment program  
10 offered by the Bureau of Prisons, as well that he be housed as near  
11 as possible to Chicagoland area so he can have the continued  
12 support of his family.

13 All right. Anything else from you, Mr. Foley?

14 MR. FOLEY: No, your Honor.

15 THE COURT: Miss Houston, anything else from you?

16 MS. HOUSTON: No, your Honor.

17 THE COURT: All right. Thank you.

18 Good luck, Mr. Harris.

19 (WHICH WERE ALL THE PROCEEDINGS HAD).  
20  
21  
22  
23  
24  
25

## C E R T I F I C A T E

I, Sharon Boleck Mroz, being a duly authorized and acting official court reporter for the United States District Court, for the Northern District of Indiana, Hammond Division, do hereby Certify that I did report in machine shorthand the foregoing proceedings, and that my shorthand notes So taken at said time and place were reduced to typewriting under my personal direction.

I further certify that the foregoing typewritten transcript constitutes a true record of said proceedings, so ordered to be transcribed.

\_\_\_\_S/ Sharon Boleck Mroz\_\_\_\_\_

Sharon Boleck Mroz

Official Court Reporter

Dated: May 8, 2014